

## **EXHIBIT 70**

Page 1

JAMES DONDERO - 10/4/22

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: )  
 ) CHAPTER 11  
 )  
HIGHLAND CAPITAL ) CASE NO.  
MANAGEMENT, L.P., )  
 ) 19-34054-SGJ11  
Reorganized Debtor. )  
 )  
\_\_\_\_\_ )

REMOTE VIDEOTAPED DEPOSITION OF

JAMES DONDERO

Tuesday, October 4, 2022

Reported by:

KIM A. McCANN, RMR, CRR, CSR

JOB NO. 217518

<p>Page 2</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 October 4, 2022</p> <p>3 10:02 a.m.</p> <p>4</p> <p>5 Remote Videotaped Deposition of JAMES</p> <p>6 DONDERO, held via Zoom Videoconference, pursuant</p> <p>7 to the Federal Rules of Civil Procedure before</p> <p>8 Kim A. McCann, Registered Merit Reporter,</p> <p>9 Certified Realtime Reporter and Certified</p> <p>10 Shorthand Reporter in and for the State of Texas.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 R E M O T E A P P E A R A N C E S:</p> <p>3 APPEARING FOR THE REORGANIZED DEBTOR/PLAINTIFF:</p> <p>4 John Morris, Esq.</p> <p>5 Hayley Winograd, Esq.</p> <p>6 Jeff Pomerantz, Esq.</p> <p>7 Gregory Demo, Esq.</p> <p>8 PACHULSKI STANG ZIEHL &amp; JONES LLP</p> <p>9 10100 Santa Monica Blvd.,</p> <p>10 Los Angeles, California 90067</p> <p>11</p> <p>12 APPEARING FOR NEXPOINT REAL ESTATE PARTNERS, LLC</p> <p>13 AND THE WITNESS:</p> <p>14 CHARLES GAMEROS, JR., ESQ.</p> <p>15 Hoge &amp; Gameros LLP</p> <p>16 6116 North Central Expressway</p> <p>17 Dallas, Texas 75206</p> <p>18</p> <p>19 Also Present:</p> <p>20 Deborah Newman, Esq., Quinn Emanuel</p> <p>21 La Asia Cantey - Pachulski Stang Ziehl &amp; Jones</p> <p>22 LLP</p> <p>23 Philip Rizzuti, Videographer</p> <p>24</p> <p>25</p>
<p>Page 4</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 I N D E X</p> <p>3 PAGE</p> <p>4 Examination by Mr. Morris 7</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Exhibit 1 Subpoena to appear for 8</p> <p>9 Mr. Dondero</p> <p>10 Exhibit 2 Limited Liability Company 24</p> <p>11 Agreement for SE Multifamily</p> <p>12 Holdings, LLC</p> <p>13 Exhibit 3 Bridge Loan Agreement of 9/26/18 63</p> <p>14 Exhibit 4 Email dated 2/28/19 from Mark 87</p> <p>15 Patrick</p> <p>16 Exhibit 5 Email dated 2/28/19 from Mark 89</p> <p>17 Patrick</p> <p>18 Exhibit 6 Email dated 3/14/19 from 94</p> <p>19 Mr. Broaddus</p> <p>20 Exhibit 9 First Amended and Restated LLC 99</p> <p>21 Agreement</p> <p>22 Exhibit 12 Schedule K-1 for 2018 for SE 123</p> <p>23 Multifamily Holdings, LLC</p> <p>24 Exhibit 20 HCRE Proof of Claim 127</p> <p>25</p>	<p>Page 5</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 P R O C E E D I N G S</p> <p>3 THE VIDEOGRAPHER: Good morning,</p> <p>4 Counsel. My name is Philip Rizzuti. I am</p> <p>5 a legal videographer in association with</p> <p>6 TSG Reporting, Inc. Because this is a</p> <p>7 remote deposition, I will not be in the</p> <p>8 same room with the witness. Instead, I</p> <p>9 will record this videotaped deposition</p> <p>10 remotely. The reporter, Kim McCann, also</p> <p>11 will not be in the same room and will swear</p> <p>12 the witness remotely.</p> <p>13 Do all parties stipulate to the</p> <p>14 validity of this video recording and remote</p> <p>15 swearing, and that it will be admissible in</p> <p>16 the courtroom as if it had been taken</p> <p>17 following Rule 30 of the Federal Rules of</p> <p>18 Civil Procedure and the State's rules where</p> <p>19 this case is pending?</p> <p>20 MR. MORRIS: This is John Morris,</p> <p>21 counsel to Highland Capital Management,</p> <p>22 L.P. Highland consents.</p> <p>23 MR. GAMEROS: This is Bill Gameros,</p> <p>24 counsel to NexPoint Real Estate Partners,</p> <p>25 LLC. We consent.</p>

<p style="text-align: right;">Page 6</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 THE VIDEOGRAPHER: Thank you. This</p> <p>3 is the start of media labeled Number 1 of</p> <p>4 the video-recorded deposition of Mr. James</p> <p>5 Dondero in the matter of In Re: Highland</p> <p>6 Capital Management LP, in the United States</p> <p>7 Bankruptcy Court for the Northern District</p> <p>8 of Texas, Dallas Division, Case Number</p> <p>9 19-34054-SGJ-11.</p> <p>10 Today -- this deposition is being</p> <p>11 held on October 4, 2022, at approximately</p> <p>12 10:02 a.m. My name is Phil Rizzuti. I'm</p> <p>13 the legal video specialist from TSG</p> <p>14 Reporting, Inc. The court reporter is</p> <p>15 Kim McCann in association with TSG</p> <p>16 Reporting.</p> <p>17 Counsel, please introduce</p> <p>18 yourselves.</p> <p>19 MR. MORRIS: This is John Morris</p> <p>20 from Pachulski Stang for Highland. I've --</p> <p>21 I've identified all the other folks for</p> <p>22 side who are on this call. Can we just --</p> <p>23 go ahead, Bill.</p> <p>24 MR. GAMEROS: No problem.</p> <p>25 MR. MORRIS: We've got to get this</p>	<p style="text-align: right;">Page 7</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 started, we really do.</p> <p>3 THE VIDEOGRAPHER: I gotcha.</p> <p>4 Sorry. Sorry.</p> <p>5 Would you swear in the witness,</p> <p>6 Kim.</p> <p>7 THE REPORTER: Mr. Dondero, may I</p> <p>8 get you to raise your right hand.</p> <p>9 JAMES DONDERO,</p> <p>10 Having been first duly sworn, testified as</p> <p>11 follows:</p> <p>12 EXAMINATION</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Good morning, Mr. Dondero. Can you</p> <p>15 hear me okay?</p> <p>16 A. Yes.</p> <p>17 Q. Is there anybody in the room with you</p> <p>18 today?</p> <p>19 A. Just my lawyer.</p> <p>20 Q. Do you have any phone with you or any</p> <p>21 other devices with you right now?</p> <p>22 A. No.</p> <p>23 Q. Okay. Can --</p> <p>24 MR. MORRIS: Can -- Ms. Canty, can</p> <p>25 you please put up on the screen Exhibit 1,</p>
<p style="text-align: right;">Page 8</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 which is a subpoena.</p> <p>3 (Exhibit 1 was marked.)</p> <p>4 Q. Okay. Do you see the sub -- subpoena</p> <p>5 on the screen, sir?</p> <p>6 A. Yes.</p> <p>7 Q. Have you seen it before?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Are you aware that today's deposition</p> <p>10 was supposed to begin at 9:30 Central time?</p> <p>11 A. Yes.</p> <p>12 Q. And how come you didn't show up until</p> <p>13 9:55 Central time?</p> <p>14 A. I had other things going on.</p> <p>15 Q. What other things did you have going</p> <p>16 on that prevented you from timely attending</p> <p>17 today's deposition?</p> <p>18 A. There were things at my house I had</p> <p>19 to deal with.</p> <p>20 Q. When did you realize that?</p> <p>21 A. This morning.</p> <p>22 Q. Is there any reason you didn't</p> <p>23 instruct your lawyer to give me advance notice so</p> <p>24 that I and my colleagues didn't sit around for</p> <p>25 25 minutes waiting for you?</p>	<p style="text-align: right;">Page 9</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Not any -- I -- I did not consider</p> <p>3 that.</p> <p>4 Q. Is there any reason why you cannot</p> <p>5 give complete and accurate testimony today?</p> <p>6 A. No.</p> <p>7 Q. Did you do anything to prepare for</p> <p>8 today's deposition?</p> <p>9 A. I just met with my lawyer.</p> <p>10 Q. Did you review any documents?</p> <p>11 A. No.</p> <p>12 Q. You didn't review any documents to</p> <p>13 prepare for today's deposition, do I have that</p> <p>14 right?</p> <p>15 A. We went over a couple of things with</p> <p>16 my lawyer. I don't remember exactly which</p> <p>17 documents.</p> <p>18 Q. Did you look at the Proof of Claim</p> <p>19 that was filed by HCRE?</p> <p>20 A. Not specifically.</p> <p>21 Q. Can you identify any document that</p> <p>22 you reviewed in connection with your preparation</p> <p>23 for today's deposition?</p> <p>24 A. No.</p> <p>25 Q. Did you speak with anybody in the</p>

<p style="text-align: right;">Page 10</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 world about today's deposition other than your</p> <p>3 lawyer?</p> <p>4 A. Just my lawyer.</p> <p>5 Q. You didn't speak with Mr. Broadus?</p> <p>6 A. No.</p> <p>7 Q. You didn't speak with Mr. McGraner?</p> <p>8 A. No.</p> <p>9 Q. You didn't speak with anybody at</p> <p>10 BH Equities?</p> <p>11 A. No.</p> <p>12 Q. You didn't speak with anybody at</p> <p>13 Barker Viggato?</p> <p>14 A. I didn't speak with anybody. You can</p> <p>15 keep listing people, but, no, I did not.</p> <p>16 Q. Okay. Are you familiar with an</p> <p>17 entity that goes by the acronym HCRE?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if that acronym stands</p> <p>20 for anything?</p> <p>21 A. Highland Capital Real Estate.</p> <p>22 Q. Okay. Do you know when HCRE was</p> <p>23 formed?</p> <p>24 A. Two years ago.</p> <p>25 Q. And do you know who owns HCRE today?</p>	<p style="text-align: right;">Page 11</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. I -- yes.</p> <p>3 Q. Who owns HCRE?</p> <p>4 A. It's partly Highland, partly B&amp;H, and</p> <p>5 partly NexPoint.</p> <p>6 Q. All right. I just want to clarify to</p> <p>7 make sure we're on the same page. I'm not asking</p> <p>8 about SE Multifamily. I'm asking about HCRE</p> <p>9 Part-- Partners.</p> <p>10 A. Oh. I believe -- I believe that's</p> <p>11 myself and McGraner.</p> <p>12 Q. And what -- what percentage of the</p> <p>13 membership interest do you own in HCRE?</p> <p>14 A. I -- 70 or 75 percent, I believe.</p> <p>15 Q. And do you have an understanding of</p> <p>16 what percentage interests Mr. McGraner holds in</p> <p>17 HCRE?</p> <p>18 A. The balance.</p> <p>19 Q. Does Mr. Ellington -- Scott Ellington</p> <p>20 own any membership interests in HCRE?</p> <p>21 A. That's a good question. I -- I don't</p> <p>22 remember. He may own 5 percent. I don't</p> <p>23 remember.</p> <p>24 Q. Okay. Do you know if HCRE has ever</p> <p>25 had any person or entity that owned membership</p>
<p style="text-align: right;">Page 12</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 interests other than you, Mr. McGraner, and</p> <p>3 perhaps Mr. Ellington?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Have -- have the ownership interests</p> <p>6 amongst and between you and Mr. McGraner and</p> <p>7 perhaps Mr. Ellington changed at any time since</p> <p>8 HCRE was formed?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. So to the best of your knowledge, the</p> <p>11 owners of HCRE have not changed since the time it</p> <p>12 was formed; is that fair?</p> <p>13 A. Not -- not that I remember.</p> <p>14 Q. Okay. Did you personally invest any</p> <p>15 capital in HCRE at any time in exchange for your</p> <p>16 membership interests?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you recall ever investing any</p> <p>19 capital in HCRE in exchange for your membership</p> <p>20 interests in that entity?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you recall whether Mr. McGraner</p> <p>23 ever invested directly or indirectly any capital</p> <p>24 into HCRE in exchange for his membership</p> <p>25 interests?</p>	<p style="text-align: right;">Page 13</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. I don't know.</p> <p>3 Q. Do you have an understanding as to</p> <p>4 who controls HCRE?</p> <p>5 A. I -- beyond control that would be</p> <p>6 parallel with the ownership, I don't -- I don't</p> <p>7 know the -- I don't remember the terms of the</p> <p>8 document.</p> <p>9 Q. Well, and -- and on a day-to-day</p> <p>10 basis, who is authorized to make decisions on</p> <p>11 behalf of HCRE?</p> <p>12 A. I don't -- I don't know.</p> <p>13 Q. Did you ever authorize anybody to</p> <p>14 make any decisions on behalf of HCRE?</p> <p>15 A. I don't know what the document says.</p> <p>16 Q. Have you ever looked at the document?</p> <p>17 A. No, not that I recall. And, no, not</p> <p>18 since it was originally formed and I don't -- I</p> <p>19 don't remember.</p> <p>20 Q. So -- so how -- how has HCRE made</p> <p>21 decisions since the time it was formed if you as</p> <p>22 the majority owner don't know who's authorized to</p> <p>23 make decisions without reference to -- to a</p> <p>24 document you haven't reviewed?</p> <p>25 A. Could you repeat the question again?</p>

<p style="text-align: right;">Page 14</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 How what?</p> <p>3 Q. Sure. I'm just trying to be</p> <p>4 practical here. So you own a majority of HCRE;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Does HCRE have any officers today?</p> <p>8 A. I -- I don't know. It's a</p> <p>9 partnership but I don't -- I don't -- I don't</p> <p>10 recall it having officers.</p> <p>11 Q. Does any -- does HCRE -- withdrawn.</p> <p>12 Do you know whether HCRE has ever had</p> <p>13 any officers?</p> <p>14 A. I don't know.</p> <p>15 Q. Did you ever appoint any officers to</p> <p>16 HCRE?</p> <p>17 A. I don't remember appointing anybody.</p> <p>18 If they were part of the original formation</p> <p>19 documents, I -- I don't remember.</p> <p>20 Q. Does HCRE have any employees today?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Do you know if HCRE has ever had any</p> <p>23 employees since the moment it was formed?</p> <p>24 A. I don't know.</p> <p>25 Q. Can you identify any person in the</p>	<p style="text-align: right;">Page 15</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 world who you believe was authorized on behalf --</p> <p>3 withdrawn.</p> <p>4 Can you identify any person in the</p> <p>5 world who you as the majority of -- owner of HCRE</p> <p>6 was authorized to act on behalf of HCRE other</p> <p>7 than you and Mr. McGraner?</p> <p>8 A. Other than me and Mr. McGraner, I</p> <p>9 don't believe there would be anybody else who</p> <p>10 would be authorized.</p> <p>11 Q. Is it fair to say that as the</p> <p>12 majority owner, nobody was authorized to act on</p> <p>13 behalf of HCRE without your knowledge and</p> <p>14 approval?</p> <p>15 A. I -- I -- I don't want to -- I don't</p> <p>16 want to agree with that.</p> <p>17 Q. You can't identify anybody who was</p> <p>18 authorized to act on behalf of HCRE other than</p> <p>19 you and Mr. McGraner; correct?</p> <p>20 A. Right, which is a different question.</p> <p>21 Q. I appreciate that. But -- but that's</p> <p>22 correct -- right? -- you're not aware of anybody</p> <p>23 who was authorized to act on behalf of HCRE other</p> <p>24 than you and Mr. McGraner; correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 16</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Did you ever discuss with</p> <p>3 Mr. McGraner whether he ever authorized anybody</p> <p>4 to act on behalf of HCRE?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Did Mr. McGraner ever inform you that</p> <p>7 he had authorized anybody to act on behalf of</p> <p>8 HCRE?</p> <p>9 A. I -- you know, I don't recall, but</p> <p>10 depending upon what the task was, depending if it</p> <p>11 was a less significant, noninvestment-related</p> <p>12 task, he wouldn't have necessarily told me. I</p> <p>13 wouldn't have necessarily needed to know, and I</p> <p>14 -- I don't -- I don't recall him authorizing</p> <p>15 somebody else, but it wouldn't have been unless</p> <p>16 it's -- it wouldn't have been necessarily</p> <p>17 uncommon or inappropriate for him to have</p> <p>18 delegated lesser responsibilities to somebody.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: I move to strike. And</p> <p>21 I'd just ask you to listen carefully to my</p> <p>22 question.</p> <p>23 Q. (BY MR. MORRIS) Did Mr. McGraner ever</p> <p>24 tell you that he had authorized anybody in the</p> <p>25 world to act on behalf of HCRE?</p>	<p style="text-align: right;">Page 17</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Same answer.</p> <p>3 Q. He never told you that; correct?</p> <p>4 I'll -- I'll restate the question.</p> <p>5 Mr. McGraner never identified any</p> <p>6 person to whom he had authorized to act on behalf</p> <p>7 of HCRE; correct?</p> <p>8 A. I -- I would have the same answer. I</p> <p>9 don't recall. And it wouldn't have been</p> <p>10 appropriate for him to on lesser activities.</p> <p>11 MR. MORRIS: And I'll move to</p> <p>12 strike everything after "I don't recall."</p> <p>13 Q. Are you familiar with the phrase</p> <p>14 "Project Unicom"?</p> <p>15 A. I'm sorry, what?</p> <p>16 Q. You have an under -- have you ever</p> <p>17 heard the term "Project Unicom"?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have an -- do you have an</p> <p>20 understanding of what Project Unicom refers to?</p> <p>21 A. Just generally.</p> <p>22 Q. What's your understanding of what</p> <p>23 Project Unicom refers to generally?</p> <p>24 A. I believe a couple billion dollars in</p> <p>25 multi-family properties.</p>

<p style="text-align: right;">Page 18</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. And did -- did you personally play</p> <p>3 any role in Project Unicorn?</p> <p>4 A. I was involved in the investment</p> <p>5 decision and the discussions around -- the</p> <p>6 general discussions around the allocation.</p> <p>7 Q. And what do you recall about your</p> <p>8 participation in the investment decision? What</p> <p>9 facts do you recall about that?</p> <p>10 A. That's about all I recall.</p> <p>11 Q. Who did you have these discussions</p> <p>12 with?</p> <p>13 A. Mr. McGraner.</p> <p>14 Q. Anybody else?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Did Mr. McGraner explain to you the</p> <p>17 economics of the proposed transaction known as</p> <p>18 Project Unicorn?</p> <p>19 A. Yes, it would -- him and his team did</p> <p>20 the analytics and the cost and tax allocations</p> <p>21 and those kinds of things.</p> <p>22 Q. Do you remember anything about the</p> <p>23 presentation that you just described?</p> <p>24 A. No.</p> <p>25 Q. I think you said that you</p>	<p style="text-align: right;">Page 19</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 participated in the general discussion about</p> <p>3 allocations, do I have that right?</p> <p>4 A. Yes.</p> <p>5 Q. What do you recall about that topic?</p> <p>6 A. Not much. Nothing specific. It's</p> <p>7 just some -- some assets were sold, some were</p> <p>8 retained, and the -- the ones that were sold were</p> <p>9 sold to different parties.</p> <p>10 Q. And when you use the term</p> <p>11 "allocations," what are you referring to?</p> <p>12 A. There's an -- there was an overall</p> <p>13 price and then there was a cost and tax</p> <p>14 allocations to specific assets.</p> <p>15 Q. And among who -- who were the</p> <p>16 allocations being made? Was it the members of</p> <p>17 SE Multifamily? Was it something else?</p> <p>18 A. No, it was -- it was to the specific</p> <p>19 assets.</p> <p>20 Q. Okay. Was the creation of</p> <p>21 SE Multifamily part of the execution of the</p> <p>22 Project Unicorn strategy or deal?</p> <p>23 A. I don't recall.</p> <p>24 Q. Do you recall that you signed an --</p> <p>25 an LLC agreement that resulted in the formation</p>
<p style="text-align: right;">Page 20</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 of SE Multifamily Holdings, LLC in August 2018?</p> <p>3 A. No, I don't re -- recall the specific</p> <p>4 structuring.</p> <p>5 Q. Okay. Do you recall that you signed</p> <p>6 a document on behalf of HCRE that related to the</p> <p>7 formation of SE Multifamily?</p> <p>8 A. I'm not denying that I did. It's</p> <p>9 logical that I did but I don't remember it.</p> <p>10 Q. Okay. And -- and you haven't -- have</p> <p>11 you -- have you been following the developments</p> <p>12 in the litigation over HCRE's Proof of Claim?</p> <p>13 A. I was at the hearings I'm required to</p> <p>14 be at.</p> <p>15 Q. Have you read any of the pleadings in</p> <p>16 the case?</p> <p>17 A. No. But I've been at the -- I've</p> <p>18 been at -- I think I understand the gist from the</p> <p>19 hearings.</p> <p>20 Q. Okay. But my question is whether you</p> <p>21 recall ever reading any of the pleadings that</p> <p>22 have been filed in connection with the litigation</p> <p>23 of HCRE's Proof of Claim?</p> <p>24 A. No, I do not.</p> <p>25 Q. You controlled HCRE at all times</p>	<p style="text-align: right;">Page 21</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 since its formation; is that fair?</p> <p>3 A. My ownership has been consistent but</p> <p>4 I -- and my ownership's been majority, but I -- I</p> <p>5 don't want to -- I don't want to agree with the</p> <p>6 word "control." I -- I'd prefer a more specific</p> <p>7 verb, I guess.</p> <p>8 Q. What word would you prefer to use?</p> <p>9 A. Ownership.</p> <p>10 Q. So you've owned a majority of</p> <p>11 interests in -- in that entity since it was</p> <p>12 formed; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Is there anybody in the world who can</p> <p>15 -- who -- who might have controlled HCRE other</p> <p>16 than you since the time it was formed?</p> <p>17 MR. GAMEROS: Objection. Vague and</p> <p>18 ambiguous as to "controlled."</p> <p>19 A. I -- can you ask the question again,</p> <p>20 please?</p> <p>21 Q. Sure. You're reluctant to say that</p> <p>22 you control HCRE; is that fair?</p> <p>23 MR. GAMEROS: Same objection.</p> <p>24 MR. MORRIS: Withdrawn.</p> <p>25 Q. Do you understand the word "control"</p>

<p style="text-align: right;">Page 22</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 in the context of -- of corporate governance?</p> <p>3 A. Well, I want -- I want to draw the</p> <p>4 distinction between ownership majority, majority</p> <p>5 ownership and day-to-day operations. But that's</p> <p>6 -- that's all.</p> <p>7 Q. Well, other than you and Mr. Graner</p> <p>8 -- Mr. McGraner, can you identify anybody who is</p> <p>9 authorized to control HCRE on a day-to-day basis?</p> <p>10 A. Nobody else would have ownership</p> <p>11 other than McGraner or I or control on a</p> <p>12 day-to-day basis. But, again, there are tasks</p> <p>13 that he may have delegated and authorized people</p> <p>14 to perform on his team for anything from</p> <p>15 investment analysis to structuring to tax to</p> <p>16 whatever.</p> <p>17 Q. But you have no personal knowledge of</p> <p>18 that; is that fair?</p> <p>19 A. That's right. That's why I don't</p> <p>20 want to agree that I'm the only one or he and I</p> <p>21 are the only ones that have specific day-to-day</p> <p>22 because I don't know that.</p> <p>23 Q. So -- so as you sit here right now,</p> <p>24 you have no personal knowledge that anybody in</p> <p>25 the world ever acted on behalf of HCRE on a</p>	<p style="text-align: right;">Page 23</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 day-to-day basis other than you and Mr. McGraner;</p> <p>3 correct?</p> <p>4 MR. GAMEROS: Could you repeat</p> <p>5 that? I'm sorry.</p> <p>6 MR. MORRIS: Sure.</p> <p>7 Q. As you sit here right now, you have</p> <p>8 no personal knowledge that anybody in the world</p> <p>9 ever controlled HCRE on a day-to-day basis other</p> <p>10 than you and Mr. McGraner; correct?</p> <p>11 MR. GAMEROS: Objection. Vague and</p> <p>12 ambiguous as to "controlled" again.</p> <p>13 A. Yeah, the -- the answer I'd like to</p> <p>14 give, which is similar to the other answers, is</p> <p>15 that it would have been impossible to perform all</p> <p>16 the activities that HCRE did and does with just</p> <p>17 McGraner and myself. It takes other people and</p> <p>18 other activities to purchase and operate that</p> <p>19 many properties. But I don't know specifically</p> <p>20 who else was involved.</p> <p>21 Q. You can't name anybody -- is that</p> <p>22 fair? -- who was authorized to act on behalf of</p> <p>23 HCRE at any time since it was formed other than</p> <p>24 you and Mr. McGraner; correct?</p> <p>25 A. I don't have specific awareness.</p>
<p style="text-align: right;">Page 24</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. I appreciate that. Is it fair to say</p> <p>3 that you controlled Highland at all times up</p> <p>4 until January 9, 2020?</p> <p>5 A. I -- I've -- I had majority</p> <p>6 ownership -- or not even majority ownership -- I</p> <p>7 had the most senior executive position.</p> <p>8 Q. Okay.</p> <p>9 MR. MORRIS: Can we put up</p> <p>10 Exhibit 2, please, which is the original</p> <p>11 LLC agreement for SE Multifamily.</p> <p>12 (Exhibit 2 was marked.)</p> <p>13 Q. Mr. Dondero, we've done this before,</p> <p>14 and I just want to remind you that this is not,</p> <p>15 you know, any -- any attempt to trick you, right.</p> <p>16 We're going to put up some documents on the</p> <p>17 screen today. If there's anything that you think</p> <p>18 you need to me -- to read in order to have</p> <p>19 context in the rest of it, will you let me know?</p> <p>20 A. Sure.</p> <p>21 Q. Do you see that this is a Limited</p> <p>22 Liability Company Agreement for SE Multifamily</p> <p>23 Holdings, LLC, and it's dated as of August 23,</p> <p>24 2018?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. You've seen this document before;</p> <p>3 correct?</p> <p>4 A. Just generally.</p> <p>5 Q. Okay.</p> <p>6 MR. MORRIS: Can we go to page 17,</p> <p>7 please.</p> <p>8 Q. Those are your signatures; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And you signed this agreement on</p> <p>11 behalf of Highland Capital Management, L.P. and</p> <p>12 HCR -- HCRE Partners, LLC; correct?</p> <p>13 A. Yes.</p> <p>14 Q. I'm just going to refer to</p> <p>15 Highland Capital Management, L.P. today as</p> <p>16 Highland. Is that okay with you?</p> <p>17 A. Yeah.</p> <p>18 Q. Do you know why Highland was included</p> <p>19 in this agreement?</p> <p>20 A. They were one of the partners.</p> <p>21 Q. Do you know why they became one of</p> <p>22 the partners?</p> <p>23 A. I -- I -- they provided -- they</p> <p>24 provided, I believe, a guaranty, and it's a</p> <p>25 nominal amount of money, if I -- if I remember</p>



<p style="text-align: right;">Page 26</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 correctly.</p> <p>3 Q. Who decided that HCMLP or Highland</p> <p>4 would be a party to the SE Multifamily Holdings,</p> <p>5 LLC agreement?</p> <p>6 A. Who decided -- it was -- the guaranty</p> <p>7 was a necessary part of the transaction.</p> <p>8 Q. And that's --</p> <p>9 A. So it was -- the guaranty was a</p> <p>10 necessary part of the transaction; so they needed</p> <p>11 -- they needed to be involved.</p> <p>12 Q. Who determined that the guaranty was</p> <p>13 a necessary part of the transaction?</p> <p>14 A. It was -- it was precipitated by the</p> <p>15 -- I'm not sure who they precipitated -- like, I</p> <p>16 don't want to speculate. Typically it's --</p> <p>17 typically it's a borrow -- I mean, the lender or</p> <p>18 the seller, but I don't remember in this case.</p> <p>19 Q. And when you say that the guaranty</p> <p>20 was nec- -- a necessary part of the transaction,</p> <p>21 is it fair to say that the transaction could not</p> <p>22 have happened without Highland's guaranty?</p> <p>23 A. I'm not saying that. I think that</p> <p>24 was -- it was the simplest, most elegant way to</p> <p>25 get the transaction done, but if for some reason</p>	<p style="text-align: right;">Page 27</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 we couldn't use the Highland guaranty, we would</p> <p>3 have figured out some other way to do it.</p> <p>4 Q. Okay. But you made the decision on</p> <p>5 behalf of Highland to participate in</p> <p>6 Project Unicorn; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you knew that Highland's guaranty</p> <p>9 was a necessary part of the transaction at the</p> <p>10 time you signed this document; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And so you knew that Highland was</p> <p>13 going to be part of SE Multifamily at the time</p> <p>14 you signed this document; correct?</p> <p>15 A. That -- that part I didn't -- I don't</p> <p>16 know. I didn't know at that moment if -- when I</p> <p>17 signed the document.</p> <p>18 Q. Before you signed the document, did</p> <p>19 you have any recollection of speaking with</p> <p>20 anybody in the world about whether Highland would</p> <p>21 or should be part of the SE Multifamily Holdings,</p> <p>22 LLC entity?</p> <p>23 A. I -- I don't remember having any</p> <p>24 conversations about this transaction with anybody</p> <p>25 other than Mr. McGraner.</p>
<p style="text-align: right;">Page 28</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. So is it fair to say that your</p> <p>3 understanding that the Highland guaranty was a</p> <p>4 necessary part of the transaction, that's an</p> <p>5 understanding that you gained from Mr. McGraner?</p> <p>6 A. I -- yes.</p> <p>7 Q. And do you recall if that</p> <p>8 understanding was formed during the course of the</p> <p>9 presentation that you described earlier?</p> <p>10 A. I -- I don't recall.</p> <p>11 Q. Do you recall if Mr. McGraner told</p> <p>12 you -- withdrawn.</p> <p>13 Did Mr. McGraner identify any reason</p> <p>14 for including Highland in the SE Multifamily</p> <p>15 Holdings, LLC entity other than that had to</p> <p>16 guaranty the loan that was being taken from</p> <p>17 KeyBank?</p> <p>18 A. That's the -- the primary thing I</p> <p>19 recall.</p> <p>20 Q. Do you recall whether anybody ever</p> <p>21 explained to you that there could be economic</p> <p>22 benefits to HCRE by having Highland participate</p> <p>23 as a member in SE Multifamily?</p> <p>24 A. I -- I don't recall.</p> <p>25 Q. Did you have a -- ever have any</p>	<p style="text-align: right;">Page 29</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 discussions with anybody at any time as to</p> <p>3 whether there would be tax benefits from</p> <p>4 including Highland in SE Multifamily?</p> <p>5 A. I do recall there was -- there was</p> <p>6 some benefit because as I believe Highland's</p> <p>7 income was -- income that flowed through to</p> <p>8 Highland was largely sheltered.</p> <p>9 Q. And what do you mean by that?</p> <p>10 A. Most of the equity interests in</p> <p>11 Highland were owned by a insurance company.</p> <p>12 MR. GAMEROS: John, we're going to</p> <p>13 -- we're going to take a quick break.</p> <p>14 MR. MORRIS: No, we're not,</p> <p>15 actually. You can ask for a break and then</p> <p>16 I can decide that --</p> <p>17 MR. GAMEROS: Okay. We are.</p> <p>18 MR. MORRIS: -- we could, but I</p> <p>19 don't think it's appropriate for you to</p> <p>20 tell when I'm taking a break in my</p> <p>21 deposition that you and your client</p> <p>22 appeared 25 minutes late for. Okay?</p> <p>23 (No verbal response.)</p> <p>24 MR. MORRIS: Can you please note on</p> <p>25 the record that they just blacked me out</p>

<p style="text-align: right;">Page 30</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 and shut down the deposition on their own</p> <p>3 unilaterally. Will you please make a note</p> <p>4 of that in the transcript.</p> <p>5 THE VIDEOGRAPHER: Mr. Morris, this</p> <p>6 is the videographer. Do you want to stay</p> <p>7 on the record or do you want to go off?</p> <p>8 MR. MORRIS: I want to stay on the</p> <p>9 record.</p> <p>10 THE VIDEOGRAPHER: Okay. I'll --</p> <p>11 the camera's going.</p> <p>12 MR. MORRIS: Yeah, please -- please</p> <p>13 leave it rolling because this is just so</p> <p>14 completely inappropriate.</p> <p>15 THE VIDEOGRAPHER: No problem.</p> <p>16 MR. GAMEROS: Thanks, John. We're</p> <p>17 back.</p> <p>18 MR. MORRIS: Hey, Bill, if it</p> <p>19 happens again, I shut the deposition down</p> <p>20 and we go to the Judge. Okay? I just want</p> <p>21 to give you notice. I'm not asking for an</p> <p>22 agreement.</p> <p>23 Can I have the last question and</p> <p>24 answer read back, please?</p> <p>25 (Requested portion was read.)</p>	<p style="text-align: right;">Page 31</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. (BY MR. MORRIS) Mr. Dondero, did you</p> <p>3 just speak with your counselor after he shut the</p> <p>4 deposition down during the period the deposition</p> <p>5 was shut down?</p> <p>6 A. No. He ran to the bathroom.</p> <p>7 Q. Really? Okay. What insurance</p> <p>8 companies are you referring to?</p> <p>9 A. I don't -- it's part of the Rand</p> <p>10 transaction. I don't know the name of the</p> <p>11 insurance company.</p> <p>12 Q. How is Highland's income largely</p> <p>13 sheltered through the -- through its ownership by</p> <p>14 insurance companies?</p> <p>15 A. I don't know.</p> <p>16 Q. Well, what's -- what's your basis for</p> <p>17 saying that Highland's income is largely</p> <p>18 sheltered?</p> <p>19 A. That -- that's my understanding,</p> <p>20 that's what I was told by the tax people and the</p> <p>21 people that put the Rand transaction together.</p> <p>22 Q. And who are those people?</p> <p>23 A. Mark Patrick and his team.</p> <p>24 Q. So was it your understanding, at the</p> <p>25 time that you entered into this LLC agreement on</p>
<p style="text-align: right;">Page 32</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 behalf of Highland and HCRE, that there were tax</p> <p>3 advantages by including Highland as the result of</p> <p>4 the fact that its income was largely sheltered?</p> <p>5 A. I -- I believe there was some</p> <p>6 benefit. There -- I believe there was some tax</p> <p>7 benefit, yes.</p> <p>8 Q. And is that because Highland was not</p> <p>9 likely to be a taxpayer? Withdrawn.</p> <p>10 Is that because Highland was not</p> <p>11 likely -- withdrawn.</p> <p>12 Is that because the beneficial owners</p> <p>13 of Highland were not likely to be income on any</p> <p>14 distributions from SE Multifamily?</p> <p>15 A. I -- I don't know if it was regarding</p> <p>16 the distribution. I think it was regarding the</p> <p>17 income, they wouldn't -- they wouldn't have to</p> <p>18 pay tax on the income whether it was distributed</p> <p>19 or not. But I -- I don't want to -- I don't want</p> <p>20 to speculate as to questions for the tax guys.</p> <p>21 Q. I don't want you to speculate either,</p> <p>22 but I do want you to testify to your knowledge,</p> <p>23 understanding, and beliefs as the person who</p> <p>24 signed this agreement on behalf of the members.</p> <p>25 Okay?</p>	<p style="text-align: right;">Page 33</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 So with -- with that perspective,</p> <p>3 what is your understanding as to the tax benefits</p> <p>4 that resulted from Highland's inclusion in</p> <p>5 SE Multifamily?</p> <p>6 A. If you want my understanding and</p> <p>7 belief and not speculate, then let me just shut</p> <p>8 it down at -- by saying the -- I believe there</p> <p>9 was a tax benefit to including Highland, but I</p> <p>10 don't know the specifics.</p> <p>11 Q. Okay. And who was the beneficiary of</p> <p>12 that tax benefit? Like, HCRE is the one who --</p> <p>13 who benefited by including Highland for this</p> <p>14 purpose; correct?</p> <p>15 MR. GAMEROS: Could you repeat</p> <p>16 that, please?</p> <p>17 A. Yeah, please repeat.</p> <p>18 Q. Sure. By -- by directing the profits</p> <p>19 and losses to Highland as opposed to HCRE, HCRE</p> <p>20 is not going to have any tax burden with respect</p> <p>21 to profits and losses, that was the intent;</p> <p>22 correct?</p> <p>23 A. I -- I don't know and I don't want to</p> <p>24 speculate.</p> <p>25 Q. I don't want you to speculate either.</p>

<p style="text-align: right;">Page 34</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Did you have any understanding at all</p> <p>3 at the time you entered into this agreement as to</p> <p>4 how HCRE would be impacted by the allocation of</p> <p>5 profits to Highland as opposed to HCRE?</p> <p>6 A. No.</p> <p>7 Q. Did you have any understanding that</p> <p>8 Highland's participation in SE Multifamily would</p> <p>9 mitigate or otherwise limit the taxable income</p> <p>10 for HCRE?</p> <p>11 A. I did not have an understanding or</p> <p>12 knowledge of the specifics.</p> <p>13 Q. Do you recall whether you ever</p> <p>14 discussed with anybody at any time the topic of</p> <p>15 the expected tax consequences from including</p> <p>16 Highland in this deal?</p> <p>17 A. I don't remember.</p> <p>18 Q. Did HCRE re -- rely on Highland's</p> <p>19 human resources to execute Project Unicorn?</p> <p>20 A. Yes.</p> <p>21 Q. And you understood that at the time</p> <p>22 you entered into the agreement; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And SE Multifamily Holdings, LLC also</p> <p>25 relied on Highland's human resources at least</p>	<p style="text-align: right;">Page 35</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 until the year 2020; correct?</p> <p>3 A. On some, yes.</p> <p>4 Q. And you understood that at the time</p> <p>5 you signed this agreement on behalf of Highland</p> <p>6 and HCRE; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Other than serving as a guarantor and</p> <p>9 providing tax benefits and human resources, were</p> <p>10 there any other benefits to including Highland in</p> <p>11 this transaction that you haven't described and</p> <p>12 -- and the modest capital contribution I think</p> <p>13 you also mentioned?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Okay. Let's take a look at some of</p> <p>16 the provisions of this document.</p> <p>17 Did you ever see a draft of it before</p> <p>18 you signed it?</p> <p>19 A. No.</p> <p>20 Q. So you only saw the final version; is</p> <p>21 that fair?</p> <p>22 A. Yes.</p> <p>23 Q. Did you instruct anybody to prepare</p> <p>24 this document?</p> <p>25 A. Not specifically.</p>
<p style="text-align: right;">Page 36</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Was Mr. McGraner charged with the</p> <p>3 responsibility of executing Project Unicorn on</p> <p>4 behalf of HCRE?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ever learn who drafted this</p> <p>7 document?</p> <p>8 A. No.</p> <p>9 Q. So you had no personal knowledge as</p> <p>10 to who the author was; is that fair?</p> <p>11 A. Correct.</p> <p>12 Q. Did you read it before you signed it?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did anybody explain to you what it</p> <p>15 said before you signed it?</p> <p>16 A. I'm sure generally.</p> <p>17 Q. Do you have any recollection of</p> <p>18 anybody explaining to you any of the terms or</p> <p>19 conditions of this document before you signed it?</p> <p>20 A. No.</p> <p>21 Q. Did you receive any legal advice from</p> <p>22 anybody in the world before you put the pen to</p> <p>23 this paper?</p> <p>24 A. No.</p> <p>25 Q. Do you know whether Highland received</p>	<p style="text-align: right;">Page 37</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 any legal advice before you signed this document</p> <p>3 on Highland's behalf?</p> <p>4 A. I'm -- anything of any significance</p> <p>5 goes through Highland's Compliance and goes</p> <p>6 through Highland Legal also. That's standard</p> <p>7 procedure but I don't -- I wasn't involved in the</p> <p>8 particulars.</p> <p>9 Q. Can you identify any lawyer who</p> <p>10 provided advice to Highland in connection with</p> <p>11 the drafting of this document?</p> <p>12 A. Highland Compliance.</p> <p>13 Q. And what's the basis for your</p> <p>14 knowledge? What do you know as opposed to what</p> <p>15 practice there was or what you think might have</p> <p>16 happened?</p> <p>17 A. Just my knowledge and understanding</p> <p>18 is we don't do transactions without Compliance</p> <p>19 approval.</p> <p>20 Q. Okay. Did you ever speak to anybody</p> <p>21 in Compliance about this document before you</p> <p>22 signed it?</p> <p>23 A. I did not.</p> <p>24 Q. Did Mr. McGraner tell you that he had</p> <p>25 spoken with any particular person in Compliance</p>

<p style="text-align: right;">Page 38</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 before you were presented this document to sign?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you know the purpose of SE</p> <p>5 Multifamily Holdings, LLC?</p> <p>6 A. Not specifically.</p> <p>7 Q. Do you know if this document was the</p> <p>8 subject of any negotiations between HCRE and</p> <p>9 Highland?</p> <p>10 A. I believe there was some settlement</p> <p>11 discussions a couple of weeks ago.</p> <p>12 Q. I apologize. It may have been the</p> <p>13 question, Mr. Dondero.</p> <p>14 Do you know whether anybody acting on</p> <p>15 behalf of Highland negotiated any aspect of this</p> <p>16 agreement that's on the screen with anybody who</p> <p>17 was authorized to act on behalf of HCRE prior to</p> <p>18 the time that you signed it?</p> <p>19 A. I don't know.</p> <p>20 Q. You're not aware of any negotiations;</p> <p>21 is that fair?</p> <p>22 A. I don't remember.</p> <p>23 Q. You never participated in the</p> <p>24 negotiations; correct?</p> <p>25 A. I don't remember.</p>	<p style="text-align: right;">Page 39</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Nobody ever told you that they</p> <p>3 participated in any negotiation of any term or</p> <p>4 provision of this document; correct?</p> <p>5 A. I'm not that. I'm just saying I</p> <p>6 don't remember.</p> <p>7 Q. That's all I'm asking you, if you</p> <p>8 don't remember, you'll just say you don't</p> <p>9 remember. We've done this enough, right. I'm</p> <p>10 asking you for your personal knowledge.</p> <p>11 Do you recall anybody telling you at</p> <p>12 any time that they participated in a negotiation</p> <p>13 over any term or provision of this agreement?</p> <p>14 A. I don't recall specifically, but I --</p> <p>15 I do know there was iteration and discussion on</p> <p>16 terms, I just -- I don't remember.</p> <p>17 Q. Can you identify a single term that</p> <p>18 was the subject of negotiation?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you recall if there was a</p> <p>21 particular person who was responsible for</p> <p>22 reviewing this agreement to make sure that it</p> <p>23 reflected HCRE's intent?</p> <p>24 A. There's a process I'm not aware of by</p> <p>25 which these things happen. But, I mean, there's</p>
<p style="text-align: right;">Page 40</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 a process but the actual watching or -- not -- I</p> <p>3 don't want watch and I'm not involved within the</p> <p>4 process, but there is a process by which internal</p> <p>5 lawyers at NexPoint, Highland's Compliance, and</p> <p>6 external lawyers would all be involved. But I'm</p> <p>7 not involved in that -- that sausage mix.</p> <p>8 Q. I appreciate that. Can you identify</p> <p>9 anyone in the world who you believe was</p> <p>10 responsible to make sure that HCRE's interests</p> <p>11 were reflected in this document?</p> <p>12 A. Again, there was a process. I</p> <p>13 imagine compliance and tax, but I don't know and</p> <p>14 I wasn't watching and I wasn't involved in the</p> <p>15 process.</p> <p>16 Q. Do you know -- can you identify</p> <p>17 anybody in the world who was responsible for</p> <p>18 looking out for Highland's interests in</p> <p>19 connection with the drafting and execution of</p> <p>20 this document?</p> <p>21 A. Same answer, please.</p> <p>22 Q. Did you delegate to anybody the</p> <p>23 responsibility for looking out for HCRE's</p> <p>24 interests in the drafting and the preparation of</p> <p>25 this agreement?</p>	<p style="text-align: right;">Page 41</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Same answer.</p> <p>3 Q. Okay. Did you delegate -- and you</p> <p>4 can't identify anybody to whom you delegated that</p> <p>5 responsibility; correct? You just relied on the</p> <p>6 process?</p> <p>7 A. That's right, I wasn't directly</p> <p>8 involved in the process, but there is a process</p> <p>9 that would have included the people I mentioned</p> <p>10 in the prior answers.</p> <p>11 Q. Do you have any reason to believe the</p> <p>12 process was not followed in connection with the</p> <p>13 preparation of this document?</p> <p>14 A. I do not.</p> <p>15 Q. Let's just look at a few of the</p> <p>16 sections. If we can go to 1.7, please.</p> <p>17 Do you see 1.7 refers to the company</p> <p>18 ownership?</p> <p>19 A. Yes.</p> <p>20 Q. You didn't see this before you signed</p> <p>21 it because you didn't read the agreement;</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. Looking at it now, do you believe</p> <p>25 that there's anything vague or ambiguous about</p>

<p style="text-align: right;">Page 42</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Section 1.7? Withdrawn.</p> <p>3 Looking at it now, do you believe</p> <p>4 that 1.7 accurately reflects the ownership</p> <p>5 interests in SE Multifamily as of the time this</p> <p>6 original LLC agreement was written?</p> <p>7 A. Again, not having -- that's my</p> <p>8 understanding. Is that your question?</p> <p>9 Q. You don't believe there's anything</p> <p>10 inaccurate about 1.7 in terms of the allocation</p> <p>11 of ownership interests; correct?</p> <p>12 A. Not -- no, I don't believe there's --</p> <p>13 I have no reason to doubt it.</p> <p>14 Q. And you never told anybody that you</p> <p>15 believed the ownership interests in 1.7 were</p> <p>16 drafted in error; correct?</p> <p>17 A. I did not.</p> <p>18 Q. Okay. Can we go to 2.2(a), please.</p> <p>19 2.2(a), that refers to additional</p> <p>20 capital contributions. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see that it says that the</p> <p>23 manager may call capital contributions at any</p> <p>24 time from HCRE? Do you see that?</p> <p>25 A. Yep.</p>	<p style="text-align: right;">Page 43</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. And so did you understand at the time</p> <p>3 you signed the agreement, that the manager would</p> <p>4 not make any capital contribution calls to</p> <p>5 Highland?</p> <p>6 A. I didn't have -- I didn't have an</p> <p>7 understanding.</p> <p>8 Q. Okay. But looking at it now, do you</p> <p>9 have any reason to believe that the first</p> <p>10 sentence there is vague and ambiguous in any way</p> <p>11 in limiting the capital calls to HCRE?</p> <p>12 A. It says what it says. I don't -- it</p> <p>13 doesn't look ambiguous to me.</p> <p>14 Q. That's fair. And -- and you don't</p> <p>15 believe there's any error in that statement in</p> <p>16 the first sentence of Section 2.2(a). Is that</p> <p>17 also fair?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. Can we go to Section 3.1, please.</p> <p>20 Do you see that you have been</p> <p>21 identified as the manager of SE Multifamily in</p> <p>22 your capacity as an officer of HCRE?</p> <p>23 A. Yes.</p> <p>24 Q. Did you know at the time you signed</p> <p>25 this document that you were designated as the</p>
<p style="text-align: right;">Page 44</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 manager of H -- of SE Multifamily in the capacity</p> <p>3 as an officer of HCRE?</p> <p>4 A. Not specifically.</p> <p>5 Q. So you signed this document and you</p> <p>6 weren't specifically aware that you in your</p> <p>7 capacity as an officer of HCRE was designated as</p> <p>8 SE Multifamily's manager?</p> <p>9 A. Not specifically.</p> <p>10 Q. Do you have understanding of what it</p> <p>11 means to be the manager of a limited liability</p> <p>12 company?</p> <p>13 A. I think the responsibilities and the</p> <p>14 limits are usually outlined in the document, in</p> <p>15 the paragraphs, right.</p> <p>16 Q. Has SE Multifamily ever had a manager</p> <p>17 other than HCRE?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. If you'll look at paragraph 3.2, do</p> <p>20 you know whether any person or entity in the</p> <p>21 world, other than you in your capacity as an</p> <p>22 officer of HCRE, have had those responsibilities</p> <p>23 and powers set forth in -- in the rest of</p> <p>24 Article 3? And you can look at the rest of it,</p> <p>25 if you need to.</p>	<p style="text-align: right;">Page 45</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Do you understand my question, sir?</p> <p>3 It may not have been clear.</p> <p>4 A. 3.1 was --</p> <p>5 Q. Well, let me -- let me try it</p> <p>6 differently. And, again, we can scroll down, if</p> <p>7 you'd like. Article 3 sets forth the rights and</p> <p>8 obligations of the manager.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And, again, happy to scroll down, but</p> <p>12 my question is a simple one.</p> <p>13 Are you aware of any person or entity</p> <p>14 in the world, other than you in your capacity as</p> <p>15 an officer of HCRE, who had the rights and</p> <p>16 obligations that are set forth in Article 3?</p> <p>17 MR. MORRIS: And, La Asia, if you</p> <p>18 could just scroll down so Mr. Dondero can</p> <p>19 see this.</p> <p>20 (Witness reviewing document.)</p> <p>21 Q. Okay. Have you had a chance to look</p> <p>22 at 3.3 there, sir?</p> <p>23 A. Yeah, I'm good.</p> <p>24 Q. Okay. Can you identify anybody in</p> <p>25 the world who had any of the rights and</p>

<p style="text-align: right;">Page 46</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 responsibilities set forth in Article 3 other</p> <p>3 than you in your capacity as an officer of HCRE?</p> <p>4 A. It lists just me.</p> <p>5 Q. Did -- do you recall whether you ever</p> <p>6 delegated to anybody in the world any of the</p> <p>7 powers that are set forth in Article 3.3?</p> <p>8 A. Yes, I think we covered this earlier.</p> <p>9 There were definitely investment processes I</p> <p>10 delegated to Mr. McGraner, and there were, I</p> <p>11 think, definitely execution responsibilities that</p> <p>12 he delegated to people on his team and then</p> <p>13 people at Highland also.</p> <p>14 Q. Can you identify any explicit</p> <p>15 delegation of powers that you made?</p> <p>16 A. Yeah, and, again, the investment</p> <p>17 analysis, the models, the allocations on the</p> <p>18 portfolio purchase.</p> <p>19 Q. Anything else?</p> <p>20 A. That's all I remember myself</p> <p>21 specifically delegating. But, again, there would</p> <p>22 have been other delegation.</p> <p>23 Q. Can you specifically identify any</p> <p>24 delegation that Mr. McGraner made as a result of</p> <p>25 your having delegated any of the powers in 3.3 to</p>	<p style="text-align: right;">Page 47</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 him?</p> <p>3 A. Again, there's a process. And</p> <p>4 Mr. McGraner doesn't do the detailed financial</p> <p>5 analysis on each individual property. He's had</p> <p>6 analysts for that. And he doesn't do the tax or</p> <p>7 the legal structuring himself; so there's a</p> <p>8 process for that. So things that were</p> <p>9 appropriately -- things that were appropriate for</p> <p>10 his level, he did things that were appropriate</p> <p>11 for my level, I did things that were appropriate</p> <p>12 for other people's levels or skills that --</p> <p>13 Q. You have --</p> <p>14 A. -- I delegated to him as -- as any</p> <p>15 normal organization would function.</p> <p>16 Q. I apologize. Do you have any reason</p> <p>17 to believe, as you sit here right now, that</p> <p>18 Mr. McGraner did not appropriately handle the</p> <p>19 powers and responsibilities that you delegated to</p> <p>20 him?</p> <p>21 A. No, I believe he appropriately</p> <p>22 handled the responsibilities that were delegated</p> <p>23 to him, and he appropriately delegated what</p> <p>24 needed to be delegated.</p> <p>25 Q. Okay. As you sit here right now, do</p>
<p style="text-align: right;">Page 48</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 you have any basis to believe that any person to</p> <p>3 whom Mr. McGraner delegated any responsibilities</p> <p>4 failed to act appropriately?</p> <p>5 A. I do not.</p> <p>6 Q. Do you have any reason to believe</p> <p>7 that Mr. McGraner made a mistake in performing</p> <p>8 any of the responsibilities that you delegated to</p> <p>9 him?</p> <p>10 A. I'm -- I'm sorry, you broke -- the</p> <p>11 verb broke up. Could you please repeat the</p> <p>12 question?</p> <p>13 Q. Sure. Do you have any reason to</p> <p>14 believe, as you sit here right now, that</p> <p>15 Mr. McGraner made a mistake in carrying out any</p> <p>16 of the responsibilities that you delegated to</p> <p>17 him?</p> <p>18 A. I -- I don't know. I mean, mistake</p> <p>19 is a hard thing to -- that's a hard thing to</p> <p>20 know. I mean, error -- errors could be made even</p> <p>21 with the best of intentions. Like, I don't -- I</p> <p>22 don't know if there were any mistakes.</p> <p>23 Q. I -- I appreciate that and I'm -- I'm</p> <p>24 just asking you for your knowledge.</p> <p>25 Do you know whether Mr. McGraner made</p>	<p style="text-align: right;">Page 49</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 any mistakes in carrying out the duties and</p> <p>3 responsibilities that you recall delegating to</p> <p>4 him?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you know whether any person to</p> <p>7 whom Mr. McGraner delegated any of the</p> <p>8 responsibilities that you delegated to him,</p> <p>9 whether any such person ever made a mistake in</p> <p>10 carrying out those duties and responsibilities?</p> <p>11 A. I don't have specific knowledge.</p> <p>12 Q. Can we go to 6.1(a), please.</p> <p>13 Do you see 6.1(a) sets forth the</p> <p>14 allocation of distributable cash?</p> <p>15 A. Yes.</p> <p>16 Q. And it's 51 percent to HCRE and</p> <p>17 49 percent to Highland; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And you knew -- did you know</p> <p>20 that before you signed the agreement?</p> <p>21 A. No, I didn't know. I wasn't aware of</p> <p>22 the specific percentages.</p> <p>23 Q. Did anybody ever tell you before you</p> <p>24 signed the agreement how cash was going to be</p> <p>25 distributed among the members of SE Multifamily?</p>

<p style="text-align: right;">Page 50</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. No. I -- yeah -- no. I knew that</p> <p>3 Highland's ownership interest was a large</p> <p>4 minority, but I didn't know exactly how much and</p> <p>5 then I didn't know that the ownership -- how the</p> <p>6 ownership interests trickled through</p> <p>7 distributable cash in the document.</p> <p>8 Q. And you see the next paragraph</p> <p>9 pertains to the dis -- net cash from rental and</p> <p>10 leasing activities?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that 99 percent of the net</p> <p>13 cash from rental and leasing activities was going</p> <p>14 to be distributed to Highland and 1 percent to</p> <p>15 HCRE?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know why net cash from rental</p> <p>18 and leasing activities was to be distributed</p> <p>19 99 percent to Highland and 1 percent to HCRE?</p> <p>20 A. No.</p> <p>21 Q. Were you aware when you signed the</p> <p>22 agreement that that is how the net cash from</p> <p>23 rental and leasing activities was going to be</p> <p>24 distributed?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 51</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. And you never discussed this</p> <p>3 provision with anybody before entering into the</p> <p>4 agreement; correct?</p> <p>5 A. No, not that I recall.</p> <p>6 Q. Do you -- do you know whether this</p> <p>7 provision relates to the issue of Highland's</p> <p>8 income being largely sheltered that you mentioned</p> <p>9 earlier?</p> <p>10 A. I -- I don't know.</p> <p>11 Q. Do you understand that by allocating</p> <p>12 99 percent of the net cash from rental and</p> <p>13 leasing activities, was it your understanding</p> <p>14 that Highland would not likely -- or the</p> <p>15 beneficial owners of Highland wouldn't pay taxes</p> <p>16 on that cash?</p> <p>17 A. I -- I don't know specifically. I do</p> <p>18 know that Highland's income was largely</p> <p>19 sheltered.</p> <p>20 Q. Okay. Let's go to 6.4(a), please.</p> <p>21 6.4(a) is the allocation of profits and losses.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And do you see it -- it allocates 59</p> <p>25 -- 51 to 49 HCRE to Highland?</p>
<p style="text-align: right;">Page 52</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Yes.</p> <p>3 Q. And -- and is that your understanding</p> <p>4 of what was expected at the time you signed this</p> <p>5 original LLC agreement?</p> <p>6 A. I mean, you keep coming back to the</p> <p>7 same question in a different way. Let me -- let</p> <p>8 me just give the same answer as before. I -- I</p> <p>9 understood the ownership of Highland was a large</p> <p>10 minority, HCRE had a majority. How it flew --</p> <p>11 flowed through in the distributions and profits</p> <p>12 and losses, I wasn't aware.</p> <p>13 Q. Okay. So is it fair to say, then,</p> <p>14 that you don't know why profits and losses from</p> <p>15 the company's rental leasing activities were</p> <p>16 allocated 99 percent to Highland and 1 percent to</p> <p>17 HCRE as reflected in 6.4 -- 6.4(b)?</p> <p>18 A. Again, not -- no, not -- yeah, not</p> <p>19 specifically.</p> <p>20 Q. Okay. Do you know who would know?</p> <p>21 A. I -- I would -- I would assume if it</p> <p>22 had a structuring and tax aspect, you would have</p> <p>23 gotten to the bottom of that with Mark Patrick's</p> <p>24 deposition, but I -- I don't know.</p> <p>25 Q. Okay. Let's go to 8.2, please.</p>	<p style="text-align: right;">Page 53</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Do you see 8.2 -- and, again, feel</p> <p>3 free to read -- read it all, but I'm just focused</p> <p>4 on the first few words there -- it says, "Manager</p> <p>5 shall cause and be prepared and filed, all US</p> <p>6 federal, state and local income and other tax</p> <p>7 returns required to be filed by the Company and</p> <p>8 shall keep or cause to be kept complete and</p> <p>9 appropriate records and books of account."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you understand that one of your</p> <p>13 responsibilities in your capacity as an officer</p> <p>14 of HCRE was to prepare -- was to cause to be</p> <p>15 prepared and filed all tax returns?</p> <p>16 A. That -- that's what this says, yes.</p> <p>17 Q. And -- and did you understand that at</p> <p>18 the time you signed the agreement?</p> <p>19 A. No.</p> <p>20 Q. Did you ever learn that you in your</p> <p>21 capacity as an officer of HCRE was responsible</p> <p>22 for causing SE Multifamily's tax returns to be</p> <p>23 prepared and filed?</p> <p>24 A. Not specifically.</p> <p>25 Q. Do you understand that HCRE was</p>

<p>Page 54</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 responsible for preparing and -- withdrawn.</p> <p>3 Do you understand today that HCRE was</p> <p>4 responsible for causing SE Multifamily's tax</p> <p>5 returns to be prepared and filed?</p> <p>6 A. I don't know about today, but this</p> <p>7 says what it says. But this is an original,</p> <p>8 subsequently amended document that we're going</p> <p>9 over, right. So I -- this says what it says, but</p> <p>10 I -- I don't know what today's responsibilities</p> <p>11 are.</p> <p>12 Q. I'm just asking for your</p> <p>13 understanding. At the time you signed it, did</p> <p>14 you understand that HCRE would have the</p> <p>15 responsibility for causing SE Multifamily's tax</p> <p>16 returns to be prepared and filed?</p> <p>17 A. Not specifically.</p> <p>18 Q. Did you ever learn that HCRE had that</p> <p>19 responsibility?</p> <p>20 A. No.</p> <p>21 Q. Do you have any understanding as to</p> <p>22 who was responsible for causing SE Multifamily's</p> <p>23 tax returns to be prepared and filed?</p> <p>24 A. I did not have specific knowledge.</p> <p>25 Q. Did you ever ask anybody in the world</p>	<p>Page 55</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 who was taking care of SE Multifamily's tax</p> <p>3 returns?</p> <p>4 A. No.</p> <p>5 Q. Do you know the name of the firm that</p> <p>6 prepared SE Multifamily's tax returns?</p> <p>7 A. No, it would not have been my -- it</p> <p>8 would not have been typical for me to know.</p> <p>9 Q. Even though that -- even though you</p> <p>10 were identified as the manager of SE Multifamily</p> <p>11 in your capacity as an officer of HCRE; correct?</p> <p>12 A. Correct.</p> <p>13 Q. Let's go to 9.3(e), please. This is</p> <p>14 liquidation. It's the same question,</p> <p>15 Mr. Dondero.</p> <p>16 Do you see in 9.3(e) at the bottom of</p> <p>17 the liquidation waterfall, that the remaining</p> <p>18 assets left in cash would be distributed 51/49</p> <p>19 HCRE to Highland?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And -- and that's just</p> <p>22 something that was in the document but you</p> <p>23 weren't specifically aware of at the time you</p> <p>24 signed it; correct?</p> <p>25 A. Correct.</p>
<p>Page 56</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. But as you sit here right now, you</p> <p>3 don't have any reason to believe that there was</p> <p>4 any mistake in the drafting of 9.3(e); correct?</p> <p>5 A. I mean, I don't know.</p> <p>6 Q. As you sit here right now, you have</p> <p>7 no reason to believe that there's a mistake in</p> <p>8 9.3(e); correct?</p> <p>9 A. And, again, I don't know. I know</p> <p>10 there was -- this whole agreement was amended. I</p> <p>11 don't know full -- on the reasons for its</p> <p>12 amendment. It could have been mistakes or other</p> <p>13 things. I don't know.</p> <p>14 Q. I'm not asking about the amendment.</p> <p>15 I'm just asking about this document that bears</p> <p>16 your signature.</p> <p>17 As you sit here today, do you have</p> <p>18 any reason to believe that there was a mistake</p> <p>19 made in the drafting of Section 9.3(e)?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. Can we go to Schedule A,</p> <p>22 please.</p> <p>23 All right. Do you see Schedule A</p> <p>24 sets forth the capital contributions and</p> <p>25 percentage interests?</p>	<p>Page 57</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Yes.</p> <p>3 Q. Did you look at this before you</p> <p>4 signed the agreement?</p> <p>5 A. No.</p> <p>6 Q. Do you have any reason to believe</p> <p>7 there's any error on this page?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay.</p> <p>10 MR. MORRIS: Can we just take a</p> <p>11 short five-minute break?</p> <p>12 THE WITNESS: Well, let's make it</p> <p>13 ten. Yes.</p> <p>14 MR. MORRIS: Okay. It's 12:14 --</p> <p>15 or 11:14 Central time. I'll see you at</p> <p>16 11:24 Central time. Thank you very much.</p> <p>17 THE VIDEOGRAPHER: Okay. The time</p> <p>18 is 11:15 a.m., and we are going off the</p> <p>19 record.</p> <p>20 (Break from 11:14 a.m. to 11:28 a.m.)</p> <p>21 THE VIDEOGRAPHER: The time is</p> <p>22 11:31 a.m., and we are back on the record.</p> <p>23 Q. (BY MR. MORRIS) Mr. Dondero, did you</p> <p>24 speak with anybody about the substance of your</p> <p>25 testimony during the break?</p>



<p style="text-align: right;">Page 58</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. No.</p> <p>3 Q. We're starting five minutes later</p> <p>4 than the agreed upon start time. So that makes</p> <p>5 30 minutes that we've been waiting for you, and</p> <p>6 I'd just note that the U.S. Trustee's office is</p> <p>7 on the -- on the deposition now. But let's</p> <p>8 proceed.</p> <p>9 Are you familiar with an entity</p> <p>10 called BH Equities?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if BH Equities got</p> <p>13 involved in Project Unicorn?</p> <p>14 A. Yes.</p> <p>15 Q. What is your understanding of</p> <p>16 BH Equities' involvement in Project Unicorn?</p> <p>17 A. They contributed -- they contributed</p> <p>18 some cash, I believe they managed most of the</p> <p>19 properties, and they were brought into the</p> <p>20 partnership.</p> <p>21 Q. Did you personally have any</p> <p>22 conversation with anybody at any time who</p> <p>23 purported to act on behalf of BH Equities</p> <p>24 concerning any aspect of Project Unicorn?</p> <p>25 A. Not that I recall.</p>	<p style="text-align: right;">Page 59</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. And I'm sorry if -- yeah, this is</p> <p>3 kind of technical, but I think I used the word</p> <p>4 "spoke with." Let me ask it broader.</p> <p>5 Do you recall ever communicating with</p> <p>6 anybody who purported to act on behalf of</p> <p>7 BH Equities at any time concerning any aspect of</p> <p>8 Project Unicorn? So now I mean written, oral, in</p> <p>9 a meeting any time, any way.</p> <p>10 A. I do not having any conversation --</p> <p>11 any conversations or communication.</p> <p>12 Q. Do you know why BH Equities was</p> <p>13 brought in as a member -- withdrawn.</p> <p>14 Are you aware that BH Equities was</p> <p>15 brought in as a member of SE Multifamily?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know why they were brought in</p> <p>18 as a member of SE Multifamily?</p> <p>19 A. I believe for the reasons just</p> <p>20 outlined: They put some cash and they added some</p> <p>21 value as property management also.</p> <p>22 Q. Do you know when BH Equities got</p> <p>23 involved in Project Unicorn?</p> <p>24 A. Not long after the original</p> <p>25 formation, but I don't remember exactly.</p>
<p style="text-align: right;">Page 60</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Do you know if they contributed their</p> <p>3 capital before or after the time the amended LLC</p> <p>4 agreement was signed?</p> <p>5 A. I -- I don't.</p> <p>6 Q. Do you have an understanding of how</p> <p>7 much capital BH Equities contributed?</p> <p>8 A. It was a relevant amount. It was 10</p> <p>9 or 20 million bucks. I believe 20 million bucks.</p> <p>10 Q. Do you know what the proceeds of</p> <p>11 their contribution were used for?</p> <p>12 A. I do not remember.</p> <p>13 Q. Did you ever know?</p> <p>14 A. I don't remember.</p> <p>15 Q. Did you ever consider getting the</p> <p>16 capital from a source other than BH Equities?</p> <p>17 A. I don't remember.</p> <p>18 Q. Can you think -- I'm going to go back</p> <p>19 to the original LLC agreement that we looked at.</p> <p>20 Was -- was there ever a structure</p> <p>21 that you considered that didn't include Highland</p> <p>22 being a participant in the LLC agreement?</p> <p>23 A. I don't remember.</p> <p>24 Q. Do you recall that in September 2018,</p> <p>25 a -- a loan was obtained from KeyBank in</p>	<p style="text-align: right;">Page 61</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 connection with Project Unicorn?</p> <p>3 A. On the -- yeah, I remember -- I</p> <p>4 remember KeyBank financed -- was the finance --</p> <p>5 was the financing behind the -- the transaction,</p> <p>6 but I don't remember timing of the loan.</p> <p>7 Q. Did you personally approve the entry</p> <p>8 into the loan agreement with KeyBank?</p> <p>9 A. I don't -- I -- I have an awareness</p> <p>10 of that. I don't remember any specifics.</p> <p>11 Q. Did you play a role in the</p> <p>12 negotiation of the KeyBank loan documentation?</p> <p>13 A. I did not. I was not involved in the</p> <p>14 negotiation.</p> <p>15 Q. Were you made aware of the general</p> <p>16 terms of the loan?</p> <p>17 A. I'm sure at the time I was. I -- I</p> <p>18 don't remember today.</p> <p>19 Q. Do you recall who -- withdrawn.</p> <p>20 Can you identify the person or</p> <p>21 persons who were responsible for negotiating the</p> <p>22 KeyBank loan on behalf of the borrowers?</p> <p>23 A. Mr. McGraner.</p> <p>24 Q. And did you -- did you specifically</p> <p>25 delegate and authorize Mr. McGraner to negotiate</p>

<p style="text-align: right;">Page 62</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 the terms of the KeyBank loan on behalf of the</p> <p>3 borrowers?</p> <p>4 A. I don't specifically recall.</p> <p>5 Q. Okay. As you sit here right now, do</p> <p>6 you believe that Mr. McGraner made any mistakes</p> <p>7 in connection with the negotiation and</p> <p>8 documentation of the KeyBank loan?</p> <p>9 A. Not that I'm aware.</p> <p>10 Q. As you sit here right now, are you</p> <p>11 aware of anybody making any mistake or any error</p> <p>12 of any kind in negotiation and preparation of the</p> <p>13 KeyBank loan on behalf of HCRE?</p> <p>14 A. Not that I'm aware.</p> <p>15 Q. Did you ever communicate with KeyBank</p> <p>16 concerning the loan that was obtained in</p> <p>17 connection with Project Unicorn?</p> <p>18 A. I do not believe so.</p> <p>19 Q. Do you have any understanding as to</p> <p>20 whether the borrowers could have obtained the</p> <p>21 loan from KeyBank without Highland acting as a</p> <p>22 guarantor?</p> <p>23 A. I don't know.</p> <p>24 Q. Let's just look quickly at the</p> <p>25 KeyBank document -- it's Exhibit 3 -- please.</p>	<p style="text-align: right;">Page 63</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 (Exhibit 3 was marked.)</p> <p>3 Q. I'm not going to ask you about the</p> <p>4 details, but if we can go to page 97 of 205.</p> <p>5 Just -- this is the signature line. I mean, and,</p> <p>6 again, if you want to look at anything, just let</p> <p>7 me know. But I'll represent to you that this was</p> <p>8 the KeyBank loan document that was executed in</p> <p>9 connection with Project Unicorn.</p> <p>10 Do you -- do you see the signature</p> <p>11 page, sir?</p> <p>12 A. Yes.</p> <p>13 Q. And is it your understanding that</p> <p>14 Mr. McGraner was an authorized signatory to enter</p> <p>15 into this loan document on behalf of</p> <p>16 HCRE Partners, LLC?</p> <p>17 A. Yes.</p> <p>18 Q. And that he was also authorized to</p> <p>19 enter into this loan document on behalf of</p> <p>20 SE Multifamily REIT Holdings, LLC; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Can we go to the next page, please.</p> <p>23 Do you see that NexPoint Advisors,</p> <p>24 L.P. and NexPoint Real Estate Advisors IV, L.P.</p> <p>25 are also signatories on this agreement?</p>
<p style="text-align: right;">Page 64</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Yes.</p> <p>3 Q. Neither of those entities ever had an</p> <p>4 ownership interest in SE Multifamily Holdings,</p> <p>5 LLC; correct?</p> <p>6 A. I don't know.</p> <p>7 Q. You have no reason to believe that</p> <p>8 they did; correct?</p> <p>9 A. I don't know. Full truth, I don't</p> <p>10 have a reason to believe that they didn't either.</p> <p>11 I don't know.</p> <p>12 Q. Sir, you're not aware of any facts</p> <p>13 that would cause you to believe that either of</p> <p>14 the entities on this page ever had a membership</p> <p>15 interest in SE Multifamily Holdings, LLC;</p> <p>16 correct?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay. And you're not aware of any</p> <p>19 facts that would cause you to believe that either</p> <p>20 of these entities had any membership interest in</p> <p>21 ownership in SE Multifamily REIT, LLC; correct?</p> <p>22 A. I don't know. And I don't know what</p> <p>23 the -- I don't know. I don't know what the</p> <p>24 surviving entities or how things have changed</p> <p>25 since bankruptcy. I don't know.</p>	<p style="text-align: right;">Page 65</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Do you know why these two entities</p> <p>3 signed on to the loan agreement?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know if it was for credit</p> <p>6 enhancement purposes?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. Do you know whether either of</p> <p>9 these entities have any economic stake in any</p> <p>10 aspect of the Project Unicorn other than as a</p> <p>11 borrower under the KeyBank loan?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Do you control each of the</p> <p>14 entities that are listed on this page?</p> <p>15 A. I have majority ownership in both</p> <p>16 probably.</p> <p>17 Q. Okay. Can we go to the next page,</p> <p>18 please. And that's your signature on behalf of</p> <p>19 Highland Capital Management, L.P.; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you authorized Highland to enter</p> <p>22 into this loan agreement with KeyBank; correct?</p> <p>23 A. Yes.</p> <p>24 Q. Can we go to the next page, please.</p> <p>25 Do you see the Dugaboy Investment</p>

<p>Page 66</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Trust here is also a signatory to the KeyBank</p> <p>3 loan agreement?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know if Dugaboy Investment</p> <p>6 Trust is a signatory to any document related to</p> <p>7 Project Unicorn other than the KeyBank loan</p> <p>8 agreement?</p> <p>9 A. No.</p> <p>10 Q. Do you have any understanding as to</p> <p>11 why the Dugaboy Investment Trust is a signatory</p> <p>12 to the KeyBank loan agreement?</p> <p>13 A. I don't know.</p> <p>14 Q. Did anybody ever tell you that the</p> <p>15 Dugaboy Investment Trust was a signatory for</p> <p>16 credit enhancement purposes?</p> <p>17 A. I don't know that. I don't remember</p> <p>18 that, and I don't know if he included any</p> <p>19 ownership interest or consideration. I -- I</p> <p>20 don't know.</p> <p>21 Q. Do you know if the Dugaboy Investment</p> <p>22 Trust received anything in return for its</p> <p>23 agreement to participate as a borrower in the</p> <p>24 KeyBank loan?</p> <p>25 A. I don't know.</p>	<p>Page 67</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Did you ever discuss with Nancy why</p> <p>3 Dugaboy Investment Trust signed this document?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Were you aware that the Dugaboy</p> <p>6 Investment Trust was signing on to the KeyBank</p> <p>7 loan and taking the obligations thereunder?</p> <p>8 A. Not that I recall or -- no.</p> <p>9 Q. Can we go to the next page, please.</p> <p>10 Do you know what the SLHC Trust is?</p> <p>11 A. Yes.</p> <p>12 Q. What's that?</p> <p>13 A. I believe that's a trust that owns a</p> <p>14 -- a bunch of NexPoint stock.</p> <p>15 Q. Who's the beneficiary of the trust,</p> <p>16 if you know?</p> <p>17 A. I believe it's Dugaboy.</p> <p>18 Q. And you're the lifetime beneficiary</p> <p>19 of Dugaboy; correct?</p> <p>20 A. I believe so.</p> <p>21 Q. Do you know if the SLHC Trust signed</p> <p>22 any documents in connection with Project Unicorn</p> <p>23 other than this KeyBank loan document?</p> <p>24 A. I don't know.</p> <p>25 Q. Did you know that the SLHC Trust was</p>
<p>Page 68</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 going to be a signatory to the KeyBank loan</p> <p>3 document prior to the time you signed it on</p> <p>4 behalf of Highland?</p> <p>5 A. Not -- no, not that I recall.</p> <p>6 Q. Okay. Can we go to the next page.</p> <p>7 Okay. And then I guess there's a -- I guess a</p> <p>8 bunch of other entities there.</p> <p>9 Do you see that? And do you have</p> <p>10 any --</p> <p>11 A. Yes.</p> <p>12 Q. -- understanding as to who those</p> <p>13 entities are?</p> <p>14 A. No, those are specific apartment</p> <p>15 complexes.</p> <p>16 Q. And were they the entities that were</p> <p>17 going to be acquiring certain of the</p> <p>18 Project Unicorn properties?</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. Are you aware that all of the</p> <p>21 signatories that we just looked at are borrowers</p> <p>22 under the KeyBank loan?</p> <p>23 A. Whether they're borrowers or</p> <p>24 guarantors, I don't know.</p> <p>25 Q. Was it -- was it your understanding</p>	<p>Page 69</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 at the time that all of the signatories we just</p> <p>3 looked at were either borrowers or guarantors of</p> <p>4 the KeyBank loan?</p> <p>5 A. I -- I don't know. I don't have a</p> <p>6 specific recollection. As you were flipping the</p> <p>7 pages, I was surprised that some of the entities</p> <p>8 were on there. So I don't have a -- a specific</p> <p>9 recollection at the time of them.</p> <p>10 Q. All right.</p> <p>11 MR. MORRIS: Can we go to PDF -- I</p> <p>12 don't know if this is exactly right -- but</p> <p>13 let's go to 12. We're looking for the</p> <p>14 definition of "Borrowers." Let's go up.</p> <p>15 Okay. There you go.</p> <p>16 Q. (BY MR. MORRIS) Do you see that</p> <p>17 Highland Capital is a borrower under the loan</p> <p>18 documentation?</p> <p>19 A. Yes.</p> <p>20 Q. And HCRE Partners, LLC is a borrower;</p> <p>21 correct?</p> <p>22 A. HCRE Partners is a borrower, yes.</p> <p>23 Q. And the Dugaboy Investment Trust is a</p> <p>24 borrower; correct?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 70</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. And the SLHC Trust was a borrower;</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And NexPoint Advisors, L.P. was a</p> <p>6 borrower; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And NexPoint Real Estate Advisors IV,</p> <p>9 L.P. was a borrower; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And the REIT borrower and each</p> <p>12 property owner were also borrowers; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Did you understand at the time you</p> <p>15 signed this document that all of the borrowers</p> <p>16 were going to be jointly and separately liable</p> <p>17 for all of the obligations set forth in the</p> <p>18 agreement?</p> <p>19 A. No, I don't -- I don't remember or</p> <p>20 have awareness of that.</p> <p>21 Q. Did you know at the time you signed</p> <p>22 this agreement on behalf of Highland that</p> <p>23 Highland was agreeing to be jointly and severally</p> <p>24 liable for all obligations of the borrowers under</p> <p>25 this document?</p>	<p style="text-align: right;">Page 71</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Not specifically.</p> <p>3 Q. Did you ever ask anybody before</p> <p>4 signing the document what Highland's rights and</p> <p>5 obligations were under it?</p> <p>6 A. Not that I remember.</p> <p>7 Q. So you didn't specifically know. Did</p> <p>8 you have any understanding at all that when you</p> <p>9 put your pen to this document, that you were</p> <p>10 binding Highland as a joint and several obligor</p> <p>11 to all -- to satisfy all of the debts under this</p> <p>12 agreement, you didn't know that?</p> <p>13 A. No. I -- I knew Highland was the</p> <p>14 primary counterparty on the agreement. I don't</p> <p>15 -- I don't remember. I don't know if this is the</p> <p>16 original version, I don't know if this a</p> <p>17 subsequent KeyBank one. I don't -- my general</p> <p>18 recollection is that originally it was largely</p> <p>19 Highland and then -- I -- I thought there was</p> <p>20 more than one iteration and then other -- on the</p> <p>21 second iteration, other people were brought in.</p> <p>22 I thought there was an original</p> <p>23 intent to maybe sell more of the properties and</p> <p>24 then the intent became to hold more of the</p> <p>25 properties. So I thought there had to be some</p>
<p style="text-align: right;">Page 72</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 enhancer. But this is all fuzzy. I could be</p> <p>3 wrong. I don't remember the specifics. I don't</p> <p>4 remember -- I don't remember the specifics.</p> <p>5 Why don't we do this: Why don't you</p> <p>6 re-ask the question and I'll give you a short</p> <p>7 answer.</p> <p>8 Q. Before you signed this document, did</p> <p>9 you obtain any legal advice concerning -- and</p> <p>10 just a yes-or-no answer -- concerning Highland's</p> <p>11 rights and obligations under the KeyBank loan</p> <p>12 document? Did you ever get any legal advice?</p> <p>13 A. I -- I spec -- I specifically did</p> <p>14 not.</p> <p>15 Q. And do you have any recollection of</p> <p>16 anybody sitting you down and explaining to you</p> <p>17 what Highland's rights and obligations were under</p> <p>18 the KeyBank loan document before you signed it.</p> <p>19 A. Not -- not specifically.</p> <p>20 Q. Do you remember generally? Do you</p> <p>21 have any recollection whatsoever of anybody</p> <p>22 explaining any of Highland's rights and</p> <p>23 obligations under the KeyBank loan document</p> <p>24 before you signed it?</p> <p>25 A. My recollection is that it wasn't</p>	<p style="text-align: right;">Page 73</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 atypical. It was going through the normal</p> <p>3 process with the normal input from</p> <p>4 internal/external people and Compliance, and</p> <p>5 there wasn't anything unusual that rose to my</p> <p>6 desk that I recall.</p> <p>7 Q. You didn't read this document before</p> <p>8 you signed it; is that fair?</p> <p>9 A. Correct.</p> <p>10 Q. So is it fair to say, then, that</p> <p>11 since you received in legal advice and you don't</p> <p>12 have any recollection of anybody explaining the</p> <p>13 terms and conditions to you before you signed it,</p> <p>14 that you didn't know what Highland's rights and</p> <p>15 obligations were under the agreement?</p> <p>16 A. I didn't believe I needed to know. I</p> <p>17 didn't believe that they were atypical or unusual</p> <p>18 for this type of credit facility.</p> <p>19 Q. And what's the basis for your belief</p> <p>20 that they weren't -- that you didn't need to know</p> <p>21 that information because it wasn't atypical?</p> <p>22 A. The -- the process that we have in</p> <p>23 place would have brought it to my attention if it</p> <p>24 had been unusual.</p> <p>25 Q. And nobody brought to your attention</p>

<p style="text-align: right;">Page 74</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 that Highland was going to be jointly and</p> <p>3 severally liable for all of the obligations under</p> <p>4 this document before you signed it?</p> <p>5 A. Not specifically. Not that I recall.</p> <p>6 Q. Do you have any reason to believe, as</p> <p>7 you sit here right now, that any mistake or error</p> <p>8 was made in the drafting or negotiation of this</p> <p>9 particular loan agreement on behalf of HCRE?</p> <p>10 A. I -- I have no reason to think</p> <p>11 there's an error in this particular section. I</p> <p>12 do believe one of our defenses or responses is</p> <p>13 that there's error or mistake in the document in</p> <p>14 that it doesn't specifically provide for</p> <p>15 amendments. But it -- it has been amended and</p> <p>16 redone at least a couple of times, right.</p> <p>17 Q. The KeyBank loan document has been</p> <p>18 amended and redone a couple of times?</p> <p>19 A. I was speaking -- I was -- I was</p> <p>20 speaking more to the partnership agreements</p> <p>21 but --</p> <p>22 Q. Okay. Then -- then it's my fault,</p> <p>23 Mr. Dondero. Let's just strike that answer, and</p> <p>24 let me ask the question again.</p> <p>25 Do you have any reason to believe, as</p>	<p style="text-align: right;">Page 75</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 you sit here right now, that there was any</p> <p>3 mistake or error made in the negotiation or the</p> <p>4 drafting of the KeyBank loan document?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. Thank you. Do you know who made the</p> <p>7 decision to have HCMLP or Highland sign the</p> <p>8 KeyBank loan document as a borrower? Who decided</p> <p>9 that?</p> <p>10 A. Who decided that? I think it was a</p> <p>11 negotiation and it was required then by KeyBank,</p> <p>12 and then ultimately I -- I agreed to.</p> <p>13 Q. Do you have an understanding as to</p> <p>14 why KeyBank required HCMLP to sign on the</p> <p>15 agreement as a borrower?</p> <p>16 A. Not specifically.</p> <p>17 Q. Did you ever have any discussion with</p> <p>18 anybody at any time as to why KeyBank required</p> <p>19 Highland to be a borrower under the KeyBank loan</p> <p>20 document?</p> <p>21 A. Not specifically.</p> <p>22 Q. Why did you agree that Highland would</p> <p>23 sign on as a borrower to the KeyBank loan</p> <p>24 document?</p> <p>25 A. We didn't believe it was unreasonable</p>
<p style="text-align: right;">Page 76</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 request. We're in the banking business</p> <p>3 ourselves. Lenders look for a certain amount of</p> <p>4 collateral and alignment of interests, and they</p> <p>5 get that in a variety of ways with, you know,</p> <p>6 hard assets and then with guaranties and shared</p> <p>7 liability.</p> <p>8 Q. So is it fair to characterize</p> <p>9 Highland's participation as a borrower under the</p> <p>10 KeyBank loan as another form of credit</p> <p>11 enhancement for the borrowing parties?</p> <p>12 A. I don't know. I don't know</p> <p>13 specifically. I don't know specifically why --</p> <p>14 why, you know, KeyBank was looking for it for. I</p> <p>15 wasn't involved in those negotiations.</p> <p>16 Q. Did you understand that under the</p> <p>17 loan document, that HCRE was designated as the</p> <p>18 lead borrower?</p> <p>19 A. I did not have awareness of that.</p> <p>20 Q. Do you have any input -- withdrawn.</p> <p>21 MR. MORRIS: Can we just scroll</p> <p>22 down, I think it's, like, 1.2 maybe. It's</p> <p>23 going to be about 10 or 12 pages down.</p> <p>24 Slow down. Yeah. Oh, I apologize, stop.</p> <p>25 Okay. Go down to 1.05.</p>	<p style="text-align: right;">Page 77</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. (BY MR. MORRIS) Okay. Do you see in</p> <p>3 1.05(a) it says that, among other things, "Each</p> <p>4 borrower hereby irrevocably appoints the lead</p> <p>5 borrower as its agent and attorney-in-fact for</p> <p>6 purposes of requesting and obtaining borrowings."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And then if you go back -- if you go</p> <p>10 down to 1.05(b), just the next paragraph, it says</p> <p>11 that the proceeds of each loan and advance -- if</p> <p>12 you could scroll down to (b) -- (Reading) The</p> <p>13 proceeds of each loan and advance which is</p> <p>14 requested by the borrower shall be advanced as</p> <p>15 and when otherwise provided herein or is</p> <p>16 otherwise indicated by the Lead Borrower.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. So did you understand that all of the</p> <p>20 borrowers designated the lead borrower as their</p> <p>21 agent and the lead borrower was given the power</p> <p>22 and authority to distribute the loan proceeds in</p> <p>23 any way that the lead borrower saw fit?</p> <p>24 A. I don't want to make that jump. I --</p> <p>25 the paragraph says what it says. I -- I don't</p>

<p style="text-align: right;">Page 78</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 want to make that jump.</p> <p>3 Q. Okay. Can we go up and just look at</p> <p>4 the definition of "Lead Borrower" quickly.</p> <p>5 Do you see lead borrower is</p> <p>6 HCRE Partners, LLC?</p> <p>7 A. Yes.</p> <p>8 Q. Did you have any understanding as to</p> <p>9 whether any borrower was designated as the lead</p> <p>10 borrower at the time you put your pen to this</p> <p>11 agreement?</p> <p>12 A. I did not.</p> <p>13 Q. Did you give any instruction to</p> <p>14 anyone at any time as to who should be designated</p> <p>15 as the lead borrower, if anybody?</p> <p>16 A. I did not.</p> <p>17 Q. Did you have any understanding at the</p> <p>18 time you signed this document how the loan</p> <p>19 proceeds would be allocated among borrowers?</p> <p>20 A. I did not.</p> <p>21 Q. Did you ever have any discussion with</p> <p>22 anybody at any time prior to signing this</p> <p>23 document on the topic of how loan proceeds would</p> <p>24 be allocated among borrowers?</p> <p>25 A. I did not.</p>	<p style="text-align: right;">Page 79</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Did you ever participate in any</p> <p>3 discussion with anybody at any time concerning</p> <p>4 how the loan proceeds would be allocated among</p> <p>5 borrowers?</p> <p>6 A. I did not.</p> <p>7 Q. Do you know whether any loan proceeds</p> <p>8 were ever allocated to Highland?</p> <p>9 A. I -- I -- I have no idea. I can't</p> <p>10 imagine why it would -- the loan was used to</p> <p>11 purchase a bunch of multi-families. The loan was</p> <p>12 not to make distributions to partners. I -- I --</p> <p>13 I can't imagine why any of it would have been</p> <p>14 allocated to Highland. But that -- I have no</p> <p>15 recollection of that.</p> <p>16 Q. Who -- did you have an understanding</p> <p>17 as to who the beneficiary was of this loan?</p> <p>18 A. I -- I understood the loan to be for</p> <p>19 the purchase of the multi-family apartments.</p> <p>20 Q. On whose behalf? Who was purch- --</p> <p>21 on whose behalf was that purchase being made?</p> <p>22 A. On behalf of the partnership or I</p> <p>23 don't -- I don't know if it went through the SE</p> <p>24 -- SE entity or not, but it was for the benefit</p> <p>25 of -- it was for the purpose of purchasing</p>
<p style="text-align: right;">Page 80</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 apartments.</p> <p>3 Q. I appreciate that. And -- and if you</p> <p>4 don't know, just say you don't know. I'm just</p> <p>5 asking you if you have an understanding as to who</p> <p>6 the beneficiary was in connection with the loan</p> <p>7 that was obtained to purchase the apartments.</p> <p>8 Who was the bene- -- who did you intend to</p> <p>9 beneficiary to be?</p> <p>10 A. I don't know.</p> <p>11 Q. Did you ever have any discussion with</p> <p>12 anybody any time as to how the loan proceeds</p> <p>13 would be allocated among borrowers?</p> <p>14 A. I don't believe the proceeds were</p> <p>15 allocated to borrowers.</p> <p>16 Q. Okay. So to the best of your</p> <p>17 knowledge, if that -- no -- withdrawn.</p> <p>18 Nobody, to your knowledge, was</p> <p>19 charged with the responsibility of allocating the</p> <p>20 loan proceeds among borrowers; correct?</p> <p>21 A. Not as far as I know.</p> <p>22 Q. All right. Let's just -- to put this</p> <p>23 in context, this is now September 2018, that's</p> <p>24 the date of this document.</p> <p>25 Do you -- do you have an</p>	<p style="text-align: right;">Page 81</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 understanding as to whether, following the</p> <p>3 closing of the loan, that SE Multifamily and</p> <p>4 SE Multifamily REIT subsequently closed on the</p> <p>5 acquisition of all the real estate that you've</p> <p>6 described?</p> <p>7 A. I believe it did.</p> <p>8 Q. Okay. And is it your understanding</p> <p>9 that BH Equities had contributed its capital in</p> <p>10 order to get to the closing of both the KeyBank</p> <p>11 loan as well as the acquisition of the real</p> <p>12 estate?</p> <p>13 A. I mean, yeah, I believe their</p> <p>14 contribution was a part of the transaction.</p> <p>15 Q. And the transaction was completed by</p> <p>16 the end of September 2018, at least for purposes</p> <p>17 of the acquisition -- the borrowing and the</p> <p>18 acquisition; correct?</p> <p>19 A. I mean, I don't remember the date.</p> <p>20 That sounds about right, though.</p> <p>21 Q. Okay. And -- and were you aware in</p> <p>22 the fall of 2018 that there had been discussions</p> <p>23 with BH Equities about BH Equities becoming a</p> <p>24 member of SE Multifamily?</p> <p>25 A. As far as I know, that was always the</p>

<p style="text-align: right;">Page 82</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 intent.</p> <p>3 Q. That was always the intent; right?</p> <p>4 And BH Equities in good faith put up their</p> <p>5 \$20 million or so to help finance the acquisition</p> <p>6 of the properties, and they did that before they</p> <p>7 entered into the written agreement; correct?</p> <p>8 A. I imagine there was some agreement in</p> <p>9 place. I don't know. I know there was -- then</p> <p>10 there was a more formalized agreement later, but</p> <p>11 I -- I -- I don't know if there was an initial</p> <p>12 agreement.</p> <p>13 Q. Okay. But ultimately you're aware</p> <p>14 that on or about March 15, 2019, BH Equities</p> <p>15 signed on to an Amended and Restated LLC</p> <p>16 Agreement for SE Multifamily Holdings; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And by the time they signed</p> <p>19 that agreement, all of the capital from all of</p> <p>20 the members had been contributed to</p> <p>21 SE Multifamily; correct?</p> <p>22 A. I believe so.</p> <p>23 Q. There was no capital call after the</p> <p>24 date of the Amended and Restated LLC Agreement;</p> <p>25 correct?</p>	<p style="text-align: right;">Page 83</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. I don't recall -- I don't recall any.</p> <p>3 Q. And you don't have any recollection</p> <p>4 of HCRE putting any capital into SE Multifamily</p> <p>5 at any time after March 15, 2019; correct?</p> <p>6 A. I don't know.</p> <p>7 Q. And you don't have any knowledge that</p> <p>8 Highland Capital put in any additional capital to</p> <p>9 SE Multifamily after the amended and restated</p> <p>10 agreement was signed; correct?</p> <p>11 A. I don't know.</p> <p>12 Q. And you don't have any knowledge that</p> <p>13 BH Equities put in -- put in any additional</p> <p>14 capital after the time it signed the Amended and</p> <p>15 Restated LLC Agreement on March 15, 2019;</p> <p>16 correct?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay. Did you delegate to anybody</p> <p>19 the responsibility for negotiating and drafting</p> <p>20 the Amended and Restated LLC Agreement that</p> <p>21 included BH Equities as a member?</p> <p>22 A. I'd assume Matt and his team would</p> <p>23 have used the same people internally and</p> <p>24 externally.</p> <p>25 Q. All right. I don't want to make</p>
<p style="text-align: right;">Page 84</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 assumptions. I'm just asking for your personal</p> <p>3 knowledge.</p> <p>4 Did you personally delegate to</p> <p>5 Mr. McGraner the responsibility for negotiating</p> <p>6 and drafting the Amended and Restated LLC</p> <p>7 Agreement that included BH Equities as a member?</p> <p>8 A. I don't remember formally delegating</p> <p>9 it.</p> <p>10 Q. Is there anybody who would have been</p> <p>11 responsible for negotiating and drafting the LLC</p> <p>12 ag- -- the Amended and Restated LLC Agreement</p> <p>13 other than Mr. McGraner?</p> <p>14 A. I -- I believe he would have</p> <p>15 coordinated it, but, again, it would have gone</p> <p>16 through, I believe, the same process with the</p> <p>17 same people as the original one.</p> <p>18 Q. But they all would have reported to</p> <p>19 him -- right? -- as one of the owners of HCRE?</p> <p>20 A. The external lawyers would have been</p> <p>21 vendors. He has internal lawyers on the NexPoint</p> <p>22 team, but the Compliance team doesn't report to</p> <p>23 him, and the Tax team reports up through the CFO.</p> <p>24 Q. Who does -- who does the Compliance</p> <p>25 team report to?</p>	<p style="text-align: right;">Page 85</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. The Compliance team reports to --</p> <p>3 dotted line to myself and the SEC.</p> <p>4 Q. And did you ever have any</p> <p>5 conversations with anybody in the Compliance team</p> <p>6 at any time concerning the Amended and Restated</p> <p>7 LLC Agreement?</p> <p>8 A. No, but I wouldn't have expected to</p> <p>9 either.</p> <p>10 Q. Okay. Did you have any</p> <p>11 communications with anybody in the Compliance</p> <p>12 team at any time concerning the Amended and</p> <p>13 Restated LLC Agreement for SE Multifamily?</p> <p>14 A. No, not that I recall.</p> <p>15 Q. Did you give any instructions to</p> <p>16 anybody in the Compliance department concerning</p> <p>17 the drafting and negotiation of the Amended and</p> <p>18 Restated LLC Agreement?</p> <p>19 A. I did not.</p> <p>20 Q. Do you know whether Mr. McGraner had</p> <p>21 any communications with anybody in the Compliance</p> <p>22 department concerning the negotiation and</p> <p>23 drafting of the Amended and Restated LLC</p> <p>24 Agreement for SE Multifamily?</p> <p>25 A. Not specifically.</p>

<p style="text-align: right;">Page 86</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. And he never told you of a specific</p> <p>3 conversation that he had with anybody in the</p> <p>4 Compliance department at any time concerning that</p> <p>5 document; correct?</p> <p>6 A. Not specifically.</p> <p>7 Q. Were you informed by anybody at any</p> <p>8 time regarding the negotiation of the Amended and</p> <p>9 Restated LLC Agreement?</p> <p>10 A. I'm sorry, was I what?</p> <p>11 Q. Were you ever kept informed? Did</p> <p>12 anybody -- did anybody give you periodic reports</p> <p>13 as to the state of negotiations with BH Equities?</p> <p>14 A. No.</p> <p>15 Q. Did anybody ever inform --</p> <p>16 A. Not that -- not that I recall, no.</p> <p>17 Q. I apologize. Did anybody inform you</p> <p>18 of any issues that BH Equities had with any</p> <p>19 aspect of a draft of the Amended and Restated LLC</p> <p>20 Agreement?</p> <p>21 A. No.</p> <p>22 Q. Can you identify anybody who gave</p> <p>23 HCRE any legal advice in connection with the</p> <p>24 negotiation or drafting of the Amended and</p> <p>25 Restated LLC Agreement?</p>	<p style="text-align: right;">Page 87</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. No. I don't know if Compliance would</p> <p>3 have used internal staff or external staff. I</p> <p>4 don't have awareness.</p> <p>5 Q. Okay. Can we go the next document,</p> <p>6 please, which we've marked as Exhibit 4.</p> <p>7 (Exhibit 4 was marked.)</p> <p>8 Q. And it's a pretty short document</p> <p>9 there, and you're not copied on it, I see that,</p> <p>10 Mr. Dondero.</p> <p>11 So my first question is simply</p> <p>12 whether you've ever seen this document before?</p> <p>13 A. No.</p> <p>14 Q. Who is Shawn Raver?</p> <p>15 A. I don't know, honestly.</p> <p>16 Q. That's fair. And you're familiar</p> <p>17 with Mr. Patrick; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And is it fair to say that</p> <p>20 Mr. Patrick would have been responsible for the</p> <p>21 tax structuring of the Project Unicorn</p> <p>22 documentation?</p> <p>23 A. Him or somebody on his team, yeah,</p> <p>24 but I don't know.</p> <p>25 Q. But that's his area of expertise;</p>
<p style="text-align: right;">Page 88</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 correct?</p> <p>3 A. Yeah, he's a tax attorney.</p> <p>4 Q. Okay. Do you have any idea what this</p> <p>5 email is about? It just says, "Must keep cash</p> <p>6 allocation below 50 percent for HCML -- HCMLP to</p> <p>7 avoid for consolidation."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you have any --</p> <p>11 A. I do see that.</p> <p>12 Q. Do you have any understanding as to</p> <p>13 what they're talking about?</p> <p>14 A. No.</p> <p>15 Q. Did anybody ever discuss with you --</p> <p>16 withdrawn.</p> <p>17 Did anybody ever communicate with you</p> <p>18 at any time on the issue of consolidation, at</p> <p>19 least in the context of the negotiation of the</p> <p>20 Amended and Restated LLC Agreement?</p> <p>21 A. No.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 whether HCRE wanted to avoid consolidation?</p> <p>24 A. I don't recall.</p> <p>25 Q. Do you have an -- any understanding</p>	<p style="text-align: right;">Page 89</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 as to whether consolidation referred to the</p> <p>3 consolidation of Highland and HCRE for tax</p> <p>4 purposes?</p> <p>5 A. I don't -- I don't know. I don't</p> <p>6 recall it. I don't know the specifics.</p> <p>7 Q. Did you -- do you recall ever having</p> <p>8 any conversations with anybody at any time about</p> <p>9 the potential consequences of consolidation in</p> <p>10 the context of the Amended and Restated LLC</p> <p>11 Agreement?</p> <p>12 A. I do not.</p> <p>13 Q. Do you see where they used the phrase</p> <p>14 "cash allocation"?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have any understanding of what</p> <p>17 cash allocation means in the context of this</p> <p>18 email?</p> <p>19 A. No. That's a -- that's a part that</p> <p>20 puzzles me the most.</p> <p>21 Q. Okay. Let's go to the -- next</p> <p>22 Exhibit 5, please.</p> <p>23 (Exhibit 5 was marked.)</p> <p>24 Q. Okay. And do you see this is an</p> <p>25 email from Mr. Patrick to a long list of people</p>



<p>Page 90</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 dated at the end of February 2019?</p> <p>3 A. Yes.</p> <p>4 Q. And do you see that he attaches the</p> <p>5 first Amended and Restated LLC Agreement for</p> <p>6 SE Multifamily?</p> <p>7 A. Okay. Yeah, I see this attachment.</p> <p>8 Q. And do you see in the first sentence</p> <p>9 of Mr. Patrick's email, he refers to a March 15th</p> <p>10 tax deadline that permits the retroactive</p> <p>11 amendment of this partnership agreement?</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Were you ever aware in early 2019 of</p> <p>15 this March 15th tax deadline that permitted the</p> <p>16 retroactive amendment of SE Multifamily</p> <p>17 partnership agreement?</p> <p>18 A. No. Until I read it here, I wasn't</p> <p>19 aware that that was the driver.</p> <p>20 Q. Okay. So -- so this is the first</p> <p>21 time that you're learning of that; is that fair?</p> <p>22 A. Yes.</p> <p>23 Q. So fair to say you've never seen this</p> <p>24 document before; correct?</p> <p>25 A. Not that I recall.</p>	<p>Page 91</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Do you -- do you recall that you</p> <p>3 signed an Amended and Restated LLC Agreement on</p> <p>4 behalf of both Highland and HCRE?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall whether you personally</p> <p>7 saw any drafts of it before receiving the version</p> <p>8 that you signed?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Do you see the last sentence refers</p> <p>11 to the -- the return preparer?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know whether that refers to</p> <p>14 Barker Viggato, V-i-g-g-a-t-o?</p> <p>15 A. I have no idea of the preparer.</p> <p>16 Q. And do you see that Mr. Patrick</p> <p>17 wrote, "We will need to get the return preparer</p> <p>18 comfortable before executing this document with</p> <p>19 respect to the anticipated tax allocations of the</p> <p>20 P&amp;L."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know if that allocation was</p> <p>24 referring to the 94 percent to Highland and</p> <p>25 6 percent to BH Equities that was ultimately</p>
<p>Page 92</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 adopted?</p> <p>3 A. I don't know.</p> <p>4 Q. Well, if we go to PDF page 12 -- 13</p> <p>5 of 55, do you see the draft of the agreement that</p> <p>6 Mr. Patrick provided in Section 6.4(a), there was</p> <p>7 an allocation of profits and losses, 94 percent</p> <p>8 to Highland and 6 percent to BH Equities.</p> <p>9 Do you see that?</p> <p>10 A. I see that.</p> <p>11 Q. Did -- did you participate in any</p> <p>12 discussions at any time before signing the</p> <p>13 Amended and Restated LLC Agreement concerning the</p> <p>14 allocation of profits and losses?</p> <p>15 A. No. Not -- not that I recall.</p> <p>16 Q. So is it fair to say that you did not</p> <p>17 know at the time you signed the document how</p> <p>18 profits and losses would be allocated among the</p> <p>19 members to SE Multifamily?</p> <p>20 A. That's correct.</p> <p>21 Q. Do you know who decided to allocate</p> <p>22 94 percent of SE Multifamily's profits to</p> <p>23 Highland?</p> <p>24 A. I'm guessing now but I don't want to</p> <p>25 guess. The -- I don't know.</p>	<p>Page 93</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Okay. Do you know why none of the</p> <p>3 profits and losses were allocated to HCRE?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know whether the manager had</p> <p>6 any power or authority to change that allocation</p> <p>7 at any time after the agreement was signed?</p> <p>8 A. I just remember in general, you</p> <p>9 covered it an hour or two ago. But I think the</p> <p>10 manager has broad powers -- very broad powers in</p> <p>11 terms of operating and adjusting.</p> <p>12 Q. Operating and adjusting what? The</p> <p>13 numbers in 6.4(a), the allocation of profits and</p> <p>14 losses?</p> <p>15 A. I don't -- I don't know specifically.</p> <p>16 Q. Did you ever discuss with anybody at</p> <p>17 any time whether the allocation of profits and</p> <p>18 losses from SE Multifamily should be something</p> <p>19 other than 94 percent to Highland and 6 percent</p> <p>20 to BH Equities?</p> <p>21 A. I do not.</p> <p>22 Q. Do you know, as you sit here right</p> <p>23 now, whether profits and losses were ever</p> <p>24 allocated among the members in a manner that</p> <p>25 differs from 6.4(a)?</p>

<p style="text-align: right;">Page 94</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. I don't have awareness.</p> <p>3 Q. Did you ever make a decision to</p> <p>4 allocate profits and losses in a manner that</p> <p>5 differed from 6.4(a)?</p> <p>6 A. I -- I have no awareness.</p> <p>7 Q. Did you agree on behalf of Highland</p> <p>8 to accept 94 percent of SE Multifamily's profits</p> <p>9 and losses?</p> <p>10 A. If this is the executed copy, I -- I</p> <p>11 did.</p> <p>12 Q. It's actually not, but I'll represent</p> <p>13 to you that it didn't change -- this particular</p> <p>14 provision didn't change.</p> <p>15 Do you know why -- you know, we'll</p> <p>16 get -- we'll get there when I get the executed</p> <p>17 copy.</p> <p>18 MR. MORRIS: Let's go to the next</p> <p>19 exhibit, please. Okay. And if we could</p> <p>20 just start on -- at the bottom email here.</p> <p>21 No, the -- go back up. There you go.</p> <p>22 (Exhibit 6 was marked.)</p> <p>23 Q. (BY MR. MORRIS) Do you see that</p> <p>24 Mr. Broaddus wrote an email to two people at BH</p> <p>25 Management and he copied Mr. McGraner on</p>	<p style="text-align: right;">Page 95</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 March 14, 2019?</p> <p>3 A. Yes.</p> <p>4 Q. And do you -- do you know who</p> <p>5 Mr. Broaddus is?</p> <p>6 A. Yes.</p> <p>7 Q. And who's Mr. Broaddus?</p> <p>8 A. He works in the Tax group with</p> <p>9 Mark Patrick.</p> <p>10 Q. And as you sit here right now, do you</p> <p>11 have any reason to believe that Mr. Broaddus made</p> <p>12 any errors or mistakes in the execution of his</p> <p>13 responsibilities in connection with</p> <p>14 Project Unicorn?</p> <p>15 A. I don't have -- don't have an</p> <p>16 awareness.</p> <p>17 Q. And nobody's ever told you that they</p> <p>18 believed Mr. Broaddus made a mistake in</p> <p>19 connection with the execution of his</p> <p>20 responsibilities on behalf of Project Unicorn;</p> <p>21 correct?</p> <p>22 A. No.</p> <p>23 Q. And do you see in the third -- I -- I</p> <p>24 guess it's the second sentence, Mr. Broaddus</p> <p>25 wrote, quote, that "The contribution schedule in</p>
<p style="text-align: right;">Page 96</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 the attached needs to be updated with the actual</p> <p>3 contribution numbers."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And then if we could scroll to the</p> <p>7 email above that, you'll see that Mr. Broaddus</p> <p>8 follows up and he attaches the contribution</p> <p>9 schedule.</p> <p>10 Do you see that in his email?</p> <p>11 A. Yes.</p> <p>12 Q. Now, let's take a look at the -- the</p> <p>13 attachment. Do you see that's the contribution</p> <p>14 schedule that sets forth the percentage interests</p> <p>15 of each of the members of SE Multifamily?</p> <p>16 A. Yes.</p> <p>17 Q. And do you see it also sets forth the</p> <p>18 capital contribution of each of the members?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that any of the numbers on this page are -- are</p> <p>22 wrong?</p> <p>23 A. I do not.</p> <p>24 Q. Do you see it shows HCRE Partners as</p> <p>25 having made a capital contribution of</p>	<p style="text-align: right;">Page 97</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 \$291 million or thereabouts?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have an understanding as to</p> <p>5 the source of HCRE's capital?</p> <p>6 A. No, not specifically.</p> <p>7 Q. Do you have any understanding</p> <p>8 generally as to where HCRE got \$291 million to</p> <p>9 fund its membership interests in SE Multifamily?</p> <p>10 A. Generally your -- somewhere between</p> <p>11 generally and speculating is assets contributed</p> <p>12 or gains on assets contributed. That's generally</p> <p>13 and that's speculating. I don't have specific</p> <p>14 knowledge.</p> <p>15 Q. Did anybody ever tell you that a</p> <p>16 portion of the KeyBank loan proceeds were</p> <p>17 allocated to HCRE and credited as a capital</p> <p>18 contribution to SE Multifamily?</p> <p>19 A. No.</p> <p>20 Q. Did anybody ever tell you that</p> <p>21 HCRE Partners borrowed money from another</p> <p>22 affiliate in order to finance its acquisition of</p> <p>23 the membership interests reflected on Schedule A?</p> <p>24 A. I -- I don't remember that.</p> <p>25 Q. Okay. Can you go back to the top of</p>

<p style="text-align: right;">Page 98</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 the first page. Do you see Mr. McGraner was</p> <p>3 copied on this email exchange between</p> <p>4 Mr. Broaddus and BH Equities?</p> <p>5 A. Yes.</p> <p>6 Q. Did Mr. McGraner ever tell you that</p> <p>7 he believed Mr. Broaddus had made a mistake in</p> <p>8 the preparation of the contribution schedule that</p> <p>9 we just looked at that was attached as</p> <p>10 Schedule A?</p> <p>11 A. We never had such conversations.</p> <p>12 Q. Okay. Do you recall that one of the</p> <p>13 issues that BH Equities was concerned with prior</p> <p>14 to the time that it executed the Amended and</p> <p>15 Restated LLC Agreement was the waterfall and how</p> <p>16 cash would be distributed from SE Multifamily?</p> <p>17 A. I have no awareness of that.</p> <p>18 Q. Okay. So nobody ever informed you</p> <p>19 that BH Equities was concerned about the</p> <p>20 mechanics of the waterfall?</p> <p>21 A. No, not -- no, not specifically.</p> <p>22 Q. Did anybody ever share with you a</p> <p>23 proposal that BH Equities made with respect to</p> <p>24 the distribution of cash and the waterfall?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 99</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 MR. MORRIS: I'm just going to try</p> <p>3 and speed this up a little bit and skip</p> <p>4 Exhibits 7 and 8 and ask Ms. Canty to put</p> <p>5 up what's been premarked as Exhibit 9,</p> <p>6 which is the Amended and Restated LLC</p> <p>7 Agreement.</p> <p>8 MR. GAMEROS: John, so I'm clear,</p> <p>9 you're skipping 7 and 8?</p> <p>10 MR. MORRIS: Yeah, we'll just</p> <p>11 intentionally omit it.</p> <p>12 MR. GAMEROS: All right. Thank</p> <p>13 you.</p> <p>14 MR. MORRIS: It's because I</p> <p>15 premarked this, and based on Mr. Dondero's</p> <p>16 answer, I don't see the need to take the</p> <p>17 time with that.</p> <p>18 (Exhibit 9 was marked.)</p> <p>19 Q. (BY MR. MORRIS) Okay. Do you see,</p> <p>20 Mr. Dondero, we've put up on the screen a copy of</p> <p>21 the First Amended and Restated LLC Agreement for</p> <p>22 SE Multifamily that was dated as of March 15,</p> <p>23 2019, to be effective as of August 23, 2018?</p> <p>24 A. Yeah.</p> <p>25 Q. Have you seen this document before?</p>
<p style="text-align: right;">Page 100</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. No.</p> <p>3 Q. Well, you signed it; right? If we</p> <p>4 can go to page 18.</p> <p>5 A. Yeah. No, I signed it but I have</p> <p>6 not --</p> <p>7 Q. Have you seen it since the day you</p> <p>8 signed it?</p> <p>9 A. No.</p> <p>10 Q. Did you read it before you signed it?</p> <p>11 A. No.</p> <p>12 Q. Did you obtain any drafts of it</p> <p>13 before signing this version?</p> <p>14 A. No.</p> <p>15 Q. Did you obtain any advice from</p> <p>16 counsel on behalf of Highland before you signed</p> <p>17 this agreement on Highland's behalf?</p> <p>18 A. I'm sorry, what?</p> <p>19 Q. Did you obtain any legal advice</p> <p>20 before you signed this agreement on behalf of</p> <p>21 Highland?</p> <p>22 A. Not beyond Compliance.</p> <p>23 Q. Did you obtain any legal advice</p> <p>24 before signing this document on behalf of HCRE?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 101</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Okay. And with respect to Highland,</p> <p>3 you said "Nothing beyond Compliance."</p> <p>4 What does that mean?</p> <p>5 A. Compliance would have reviewed this</p> <p>6 transaction.</p> <p>7 Q. Okay. Did you personally ever</p> <p>8 communicate with anybody in Compliance about the</p> <p>9 terms and provisions of this particular agreement</p> <p>10 before you signed it?</p> <p>11 A. No.</p> <p>12 Q. Do you have any reason to believe, as</p> <p>13 you sit here right now, that Compliance did</p> <p>14 anything wrong, improper, or by mistake in</p> <p>15 connection with whatever work it may have done in</p> <p>16 connection with this agreement?</p> <p>17 A. No. I believe they properly</p> <p>18 represented Highland Capital Management's</p> <p>19 interests and properly in a way that was</p> <p>20 compliant with being a registered investment</p> <p>21 advisor.</p> <p>22 Q. Okay. And -- and who was looking out</p> <p>23 for HCRE's interests? Withdrawn.</p> <p>24 Do you know who reviewed this</p> <p>25 document in order to make sure that it comported</p>

<p>Page 102</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 with HCRE's intent?</p> <p>3 A. I -- I trusted McGraner and his team</p> <p>4 in that regard.</p> <p>5 Q. And do you have any reason to believe</p> <p>6 that McGraner and his team failed in their</p> <p>7 efforts to create a document that reflected</p> <p>8 HCRE's intent?</p> <p>9 A. I -- I do not.</p> <p>10 Q. Did you have any responsibility for</p> <p>11 making sure that this agreement reflected HCRE's</p> <p>12 intent before you signed it?</p> <p>13 A. No.</p> <p>14 Q. All right. Let's look at Schedule A,</p> <p>15 please.</p> <p>16 MR. MORRIS: I guess it's probably</p> <p>17 the next page or two. Yeah, there you go.</p> <p>18 Q. (BY MR. MORRIS) Do you see -- and I</p> <p>19 can put them side by side if you'd like -- but do</p> <p>20 you see that this Schedule A, at least for the</p> <p>21 members' name in the top box and the capital</p> <p>22 contributions and the percentage interests is</p> <p>23 exactly the same as the document that</p> <p>24 Mr. Broaddus provided to BH Equities?</p> <p>25 A. It appears to be the same, yes.</p>	<p>Page 103</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Did you review this Schedule A before</p> <p>3 you signed the agreement?</p> <p>4 A. No.</p> <p>5 Q. Did you have any understanding at all</p> <p>6 as to how the membership interests were allocated</p> <p>7 among and between HCRE, Highland, and BH Equities</p> <p>8 before you signed the agreement?</p> <p>9 A. Not specifically.</p> <p>10 Q. Did you have any understanding at</p> <p>11 all, even if it's a general understanding, as to</p> <p>12 how the equity interests were going to be</p> <p>13 allocated among those three members?</p> <p>14 A. Generally that B&amp;H was going to be</p> <p>15 6 percent and Highland was going to be a</p> <p>16 significant minority.</p> <p>17 Q. And by sig- -- significant minority,</p> <p>18 does 46.06 percent qualify as a significant</p> <p>19 minority?</p> <p>20 A. Yes.</p> <p>21 Q. So is it fair to say that even though</p> <p>22 you didn't read this, this schedule comports with</p> <p>23 your expectations when you signed the agreement</p> <p>24 on behalf of HCRE and Highland?</p> <p>25 A. Generally.</p>
<p>Page 104</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Okay. Can we go to 1.7, please.</p> <p>3 Okay. Do you see the company ownership</p> <p>4 provision? This is the same provision that we</p> <p>5 looked at earlier, but now BH Equities is added.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And is it your understanding that</p> <p>9 when BH Equities became a 6 percent interest</p> <p>10 holder in SE Multifamily, that HCRE and Highland</p> <p>11 reduced their interests by 6 percent</p> <p>12 respectively?</p> <p>13 A. I -- I -- I wasn't involved in the</p> <p>14 math on the reductions in Highland's piece and</p> <p>15 HCRE's piece.</p> <p>16 Q. Okay. But -- but is it fair to say</p> <p>17 that 1.7 -- Section 1.7 reflects your</p> <p>18 expectations at the time you signed it?</p> <p>19 A. Generally, yes.</p> <p>20 Q. We'll go to 2.2(a). Okay. And now</p> <p>21 remember earlier in the original LLC agreement,</p> <p>22 in 2.2(a) the capital contributions were limited</p> <p>23 to HCRE?</p> <p>24 A. Yes, I -- yeah, I --</p> <p>25 Q. And now --</p>	<p>Page 105</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Yeah, the wording here is the same.</p> <p>3 Q. And now it's been changed to Liberty.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have any knowledge or</p> <p>7 information that you can share with me as to why</p> <p>8 Liberty was substituted for HCRE as an entity</p> <p>9 from whom the manager could call capital</p> <p>10 contributions?</p> <p>11 A. I have no awareness -- I have no</p> <p>12 awareness of the regurgitations that went into</p> <p>13 this.</p> <p>14 Q. Nobody informed you that</p> <p>15 SE Multifamily would no longer be able to make</p> <p>16 capital calls against HCRE; correct?</p> <p>17 A. Correct, I have no awareness of</p> <p>18 conversation.</p> <p>19 Q. Liberty became a holder of preferred</p> <p>20 interests in SE Multifamily as a result of the</p> <p>21 signing of this document; right?</p> <p>22 A. It appears so.</p> <p>23 Q. Do you know what Liberty is?</p> <p>24 A. I do not have specific awareness.</p> <p>25 Q. Okay. Let's go to 3.1, please.</p>

<p style="text-align: right;">Page 106</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Okay. Do you see that in this amended and</p> <p>3 restated agreement, it has identified as the</p> <p>4 manager of SE Multifamily here as an officer</p> <p>5 of --</p> <p>6 A. You -- you broke up on us or you were</p> <p>7 a little bit away from the microphone there.</p> <p>8 Q. Okay. Sorry about that. Do you see</p> <p>9 in 3.1, you are still identified as the manager</p> <p>10 of SE Multifamily --</p> <p>11 A. Yes.</p> <p>12 Q. -- in your capacity as an officer of</p> <p>13 HCRE?</p> <p>14 A. Yes.</p> <p>15 Q. And did you delegate any of the</p> <p>16 powers that you had as manager to anybody at any</p> <p>17 time after signing this agreement?</p> <p>18 A. Well, I think we've gone over it,</p> <p>19 right. I mean, Matt McGraner and his team have</p> <p>20 done the legal work regarding this amendment</p> <p>21 versus the original, and his team and his analyst</p> <p>22 did much of the investment work on the portfolio</p> <p>23 with Unicorn and other specific assets.</p> <p>24 Q. Okay. And did you delegate those</p> <p>25 responsibilities to him and his team?</p>	<p style="text-align: right;">Page 107</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Effectively, yes. And then, like I</p> <p>3 said, I think he delegates, you know, as</p> <p>4 appropriate to his team, and then to internal and</p> <p>5 external lawyers, tax accountants, finance,</p> <p>6 et cetera.</p> <p>7 Q. Do you have any reason to believe --</p> <p>8 and I know that I've asked these questions before</p> <p>9 in the context of the original agreement, and I</p> <p>10 -- I don't mean to burden you, but I just need to</p> <p>11 ask the same questions now that we have a new</p> <p>12 signed document. So with that background, here's</p> <p>13 the clean question:</p> <p>14 Do you have any reason to believe, as</p> <p>15 you sit here right now, that Mr. McGraner made</p> <p>16 err -- any errors or mistakes in connection with</p> <p>17 the execution of the authority that you delegated</p> <p>18 to him?</p> <p>19 A. Okay. I -- I think what I jumped the</p> <p>20 gun on answer with regard to the KeyBank loan</p> <p>21 maybe applies here. I think one of the defenses</p> <p>22 that we're making is that this -- this agreement</p> <p>23 is -- the second one is agreed in -- is -- the</p> <p>24 same one as amended and approved and cleaned up</p> <p>25 from the first agreement, but it still lacks a</p>
<p style="text-align: right;">Page 108</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 clause regarding the ability to amend and the</p> <p>3 ability to amend or change in new course. And</p> <p>4 that that -- if you want to call it a mistake as</p> <p>5 to the legal oversight or whatever, then it is a</p> <p>6 living document. It has been amended once, but</p> <p>7 it should have a provision in there that</p> <p>8 specifically allows for it and, yes, we're</p> <p>9 calling that a legal mistake, I guess, a legal</p> <p>10 error.</p> <p>11 Q. When you -- when you say that it's</p> <p>12 been amended once, do you mean that this amended</p> <p>13 and restated agreement was amended and -- amended</p> <p>14 once? Or do you mean that the original agreement</p> <p>15 was amended once and we're looking at it right</p> <p>16 now?</p> <p>17 A. The latter, the second thing you</p> <p>18 said.</p> <p>19 Q. Okay. So the original agreement was</p> <p>20 only amended once, and that amendment is</p> <p>21 reflected in Exhibit 9 that we're looking at;</p> <p>22 correct?</p> <p>23 A. If -- you know, just so that I don't</p> <p>24 overstep, as far as I know and as far as I</p> <p>25 understand, I haven't seen another agreement.</p>	<p style="text-align: right;">Page 109</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Okay.</p> <p>3 A. It's a chance I don't know and you</p> <p>4 might slip through a third agreement, but I -- I</p> <p>5 think as far as I know it's --</p> <p>6 Q. I'll -- I'll give you some comfort.</p> <p>7 Okay. I'm not aware of any amendment.</p> <p>8 And I'll just ask you in your</p> <p>9 capacity as the manager of SE Multifamily, are</p> <p>10 you aware of any amendment after this one?</p> <p>11 A. I am not.</p> <p>12 Q. Okay. And -- and when you say you</p> <p>13 believe a mistake was made, I think you've now</p> <p>14 identified the mistake as the omission of a</p> <p>15 provision that would have permitted a further</p> <p>16 amendment of this Amended and Restated LLC</p> <p>17 Agreement, do I have that right?</p> <p>18 A. Right, it is to specifically allow</p> <p>19 for it to be easily amended as a living document</p> <p>20 because it is an operating partnership.</p> <p>21 Q. Okay. And when did you first learn</p> <p>22 that this amended and restated agreement had</p> <p>23 omitted a provision that would have allowed</p> <p>24 amendment?</p> <p>25 A. Just recently as part of the POC</p>

<p>Page 110</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 circus.</p> <p>3 Q. Was it before or after you filed the</p> <p>4 Proof of Claim?</p> <p>5 A. Before or after we filed it? I'm not</p> <p>6 the lawyer. I think it's stated in the Proof of</p> <p>7 Claim, right, that that -- that's one of the</p> <p>8 mistakes or errors in drafting. I don't know if</p> <p>9 it was specifically -- the amendment provision is</p> <p>10 specifically identified in the original POC.</p> <p>11 I -- I'm not that involved in that stuff. I -- I</p> <p>12 guess I don't know the answer to your question.</p> <p>13 Q. Okay. Do you recall that -- that you</p> <p>14 authorized Highland to file for bankruptcy in</p> <p>15 October 2019?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. I'm just using that as a --</p> <p>18 kind of a data point. Do you recall whether you</p> <p>19 learned of the omission of this provision before</p> <p>20 or after the bankruptcy filing?</p> <p>21 A. I -- I wasn't -- I wasn't directly</p> <p>22 involved in the POCs and so I -- well, I'm sorry,</p> <p>23 the question you're asking, I guess, is that I --</p> <p>24 I didn't know about the lack of the amendment</p> <p>25 paragraph until recently, I guess.</p>	<p>Page 111</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Okay. I appreciate that. Let's go</p> <p>3 to 6.1(a). Do you see 6.1(a) con- -- has a</p> <p>4 provision concerning the distribution of cash?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that those percentages are</p> <p>7 the same as the percentages on Schedule A that we</p> <p>8 looked at?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any reason to believe</p> <p>11 that there's any mistake in the drafting of</p> <p>12 6.1(a)?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Okay. Let's look at 6.1(b), please.</p> <p>15 Oh, that's -- I apologize, that is for net cash</p> <p>16 from specific company assets.</p> <p>17 MR. MORRIS: Can we keep scrolling</p> <p>18 down, please. Oh, it might be 6.4(a).</p> <p>19 Just go to 6.4. Yeah. Okay.</p> <p>20 Q. So 6.4(a), this is the final</p> <p>21 agreement. This is consistent -- I'll represent</p> <p>22 to you this is verbatim 6.4(a) with the version</p> <p>23 that Mark Patrick sent around at the end of</p> <p>24 February.</p> <p>25 And do you see in 6.4(a) 94 percent</p>
<p>Page 112</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 of the profits and losses were to be allocated to</p> <p>3 Highland and 6 percent to BH Equities?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Do you have any knowledge as</p> <p>6 to how that allocation was arrived at?</p> <p>7 A. No.</p> <p>8 Q. Did anybody ever communicate with you</p> <p>9 what factors were considered in arriving at that</p> <p>10 allocation?</p> <p>11 A. No.</p> <p>12 Q. Do you know who made the decision to</p> <p>13 allocate SE Multifamily's profits and losses in</p> <p>14 the manner set forth in 6.4(a)?</p> <p>15 A. I'm -- I'm sorry, please repeat that</p> <p>16 again.</p> <p>17 Q. Do you know who made the decision to</p> <p>18 allocate the P&amp;L in this manner?</p> <p>19 A. I believe that came from the tax</p> <p>20 structuring team.</p> <p>21 Q. And that would have been under the</p> <p>22 direction of Mr. Patrick; correct?</p> <p>23 A. Yes.</p> <p>24 Q. Let's go to 8.2, please. Okay.</p> <p>25 Do you see 8.2 in this amended and restated</p>	<p>Page 113</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 agreement placed on the manager the</p> <p>3 responsibility for causing SE Multifamily's tax</p> <p>4 returns to be prepared and filed?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And do you know if the manager</p> <p>7 fulfilled the responsibilities set forth in 8.2?</p> <p>8 A. I -- I don't know. I have no reason</p> <p>9 -- no reason to think we haven't, but I don't</p> <p>10 know for sure.</p> <p>11 Q. From your perspective, did anybody in</p> <p>12 the world have any responsibility for causing</p> <p>13 SE Multifamily to prepare and file its tax</p> <p>14 returns other than the manager?</p> <p>15 A. Again, I don't know.</p> <p>16 Q. Do you have any reason to believe</p> <p>17 that -- well, withdrawn.</p> <p>18 Did you ever delegate to anybody the</p> <p>19 responsibility for causing SE Multifamily's tax</p> <p>20 returns to be prepared and filed?</p> <p>21 A. No. Or not -- not specifically.</p> <p>22 I've never focused on this paragraph before.</p> <p>23 Q. Do you know who communicated --</p> <p>24 withdrawn.</p> <p>25 I think I asked you this earlier. Do</p>

<p>Page 114</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 you know who Barker Viggato is?</p> <p>3 A. No.</p> <p>4 Q. You're not aware that that's the firm</p> <p>5 that prepared SE Multifamily's tax returns and</p> <p>6 K-1s?</p> <p>7 A. No.</p> <p>8 Q. Did you ever have any communication</p> <p>9 with anybody at any time as to who was preparing</p> <p>10 SE Multifamily's tax returns?</p> <p>11 A. No.</p> <p>12 Q. Do you know, as you sit here right</p> <p>13 now, who took the responsibility for making sure</p> <p>14 that SE Multifamily's tax returns were prepared</p> <p>15 and filed?</p> <p>16 A. I do not.</p> <p>17 Q. Okay. Have you ever seen a K-1 that</p> <p>18 was issued in connection with SE Multifamily?</p> <p>19 A. I have not.</p> <p>20 Q. Did you ever discuss the contents of</p> <p>21 any K-1 that was issued to any of</p> <p>22 SE Multifamily's members at any time?</p> <p>23 A. No.</p> <p>24 Q. Has anybody ever told you that there</p> <p>25 was a mistake in the preparation of any of</p>	<p>Page 115</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 SE Multifamily's tax returns?</p> <p>3 A. No.</p> <p>4 Q. Has anybody ever told you that there</p> <p>5 was a mistake in the preparation of any of the</p> <p>6 K-1s that were issued to any of SE Multifamily's</p> <p>7 members?</p> <p>8 A. No.</p> <p>9 Q. Are you aware of any amendment that</p> <p>10 is being considered to any of SE Multifamily's</p> <p>11 tax returns?</p> <p>12 A. No.</p> <p>13 Q. Have you ever discussed with</p> <p>14 anybody --</p> <p>15 A. I was just going to say if there is</p> <p>16 an issue you need to refresh me on or something</p> <p>17 or -- or tell me about, but I don't have</p> <p>18 awareness at all of what it seems like you're</p> <p>19 dancing around.</p> <p>20 Q. I'm not dancing around any --</p> <p>21 anybody -- anything. I'm trying to -- to -- to</p> <p>22 move this along and probably save us a whole lot</p> <p>23 of time going over documents that you don't have</p> <p>24 any recollection of ever seeing. That's what I'm</p> <p>25 trying to do.</p>
<p>Page 116</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. Okay.</p> <p>3 Q. No, if you tell me that you have</p> <p>4 knowledge, we'll go down that path, but as long</p> <p>5 as you continue to tell me that you have no</p> <p>6 recollection of anything, that's fine. Okay?</p> <p>7 A. Yeah, if -- but I'm almost curious if</p> <p>8 there is an error in something that needs to be</p> <p>9 corrected that I need to address, let me know.</p> <p>10 But I'm not aware that there was -- that there</p> <p>11 is, was, or might be an error or restatement or</p> <p>12 anything on the taxes. No one -- no one's ever</p> <p>13 mentioned taxes on this entity being an issue to</p> <p>14 me.</p> <p>15 Q. Okay. And -- and did anybody ever</p> <p>16 ask you to make any decision as to the allocation</p> <p>17 of the profits and losses from SE Multifamily to</p> <p>18 its members?</p> <p>19 A. No.</p> <p>20 Q. And you don't know -- do you have any</p> <p>21 personal knowledge as to how profits and losses</p> <p>22 were allocated in fact among the SE Multifamily</p> <p>23 members?</p> <p>24 A. No.</p> <p>25 Q. And who would have been responsible</p>	<p>Page 117</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 for making those decisions? Is that Mr. Patrick</p> <p>3 and the Tax group?</p> <p>4 A. As far as I know, yes.</p> <p>5 Q. And they would have been working</p> <p>6 under the direction of Mr. McGraner; correct?</p> <p>7 A. I mean, they would have gotten input</p> <p>8 from McGraner. Whether or not McGraner gets</p> <p>9 involved in the tax allocations, I -- I have no</p> <p>10 idea. You'll have to ask him on that.</p> <p>11 Q. Well, in your capacity as a majority</p> <p>12 owner of HCRE who is the manager of</p> <p>13 SE Multifamily, would you have expected</p> <p>14 Mr. Patrick to make decisions about the</p> <p>15 allocation of profits and losses without having</p> <p>16 some authority granted to him by one of the</p> <p>17 owners?</p> <p>18 A. He -- he's -- like all good tax</p> <p>19 accountants and tax attorneys, in -- in a</p> <p>20 compliant way, he's trying to optimize or</p> <p>21 minimize taxes in a compliant way subject to, you</p> <p>22 know, a complex -- a complex structuring. He's</p> <p>23 -- he's not getting direction or approval or</p> <p>24 looking for it on most of what he does.</p> <p>25 Q. So you're comfortable with whatever</p>

<p style="text-align: right;">Page 118</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 decisions Mr. Patrick made with respect to the</p> <p>3 allocation of profits and losses to SE</p> <p>4 Multifamily's members, you good with that?</p> <p>5 A. Yeah, I mean, generally, yes, he</p> <p>6 does -- he does a good and appropriate job for</p> <p>7 his role as to the Tax department.</p> <p>8 MR. MORRIS: So it's 1:00 or almost</p> <p>9 1:00 Central. Mr. Dondero, if we take a</p> <p>10 break until 1:30 your time, I don't think</p> <p>11 I'll have more than an hour after that.</p> <p>12 I'm happy to continue, too, by the way. If</p> <p>13 you'd like to take a short break, if you'd</p> <p>14 like to take a ten-minute break, we can do</p> <p>15 that; if you'd like to take a short break</p> <p>16 to grab a bite.</p> <p>17 But I'm not going to need the whole</p> <p>18 day here -- I want you just to know that --</p> <p>19 and I'm happy to proceed in any way you</p> <p>20 prefer. I can keep going right now and try</p> <p>21 to get to the end; we can take a short</p> <p>22 break; we can take a medium break. I just</p> <p>23 don't want to take a long break.</p> <p>24 THE WITNESS: You want to keep --</p> <p>25 how about we keep going, let's see if you</p>	<p style="text-align: right;">Page 119</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 can wrap it up.</p> <p>3 MR. MORRIS: Okay. Good.</p> <p>4 Q. (BY MR. MORRIS) Did you have any</p> <p>5 involvement in decisions concerning the time,</p> <p>6 manner, and extent of distributions from</p> <p>7 SE Multifamily to its members?</p> <p>8 A. No.</p> <p>9 Q. Do you know whether SE Multifamily</p> <p>10 ever made any distributions to its members?</p> <p>11 A. I thought it hadn't, you know, but I</p> <p>12 -- but I might not be correct on that. So that's</p> <p>13 why it would be good for me to know -- know I</p> <p>14 hadn't -- any distributions --</p> <p>15 MR. GAMEROS: Excuse me.</p> <p>16 Q. I'm sorry, I didn't quite hear your</p> <p>17 answer. Let -- let me try and ask the question</p> <p>18 again.</p> <p>19 Did you ever make any decisions as to</p> <p>20 whether or not SE Multifamily would make</p> <p>21 distributions to its members?</p> <p>22 A. No.</p> <p>23 Q. Okay. Do you know whether</p> <p>24 SE Multifamily ever made any distributions to its</p> <p>25 members?</p>
<p style="text-align: right;">Page 120</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. My recollection is that they haven't,</p> <p>3 but I don't know for sure.</p> <p>4 Q. Did you ever have a discussion with</p> <p>5 anybody at any time as to whether SE Multifamily</p> <p>6 should make distributions to any of its members?</p> <p>7 A. No.</p> <p>8 Q. Did anybody ever tell you that</p> <p>9 distributions had been made from SE Multifamily</p> <p>10 to any of its members?</p> <p>11 A. None that I'm aware.</p> <p>12 Q. Do you know whether any distributions</p> <p>13 have ever been made to Highland from</p> <p>14 SE Multifamily?</p> <p>15 A. I don't believe any distributions</p> <p>16 have made -- been made that would include</p> <p>17 Highland. So...</p> <p>18 Q. Did you ever participate in any</p> <p>19 discussions as to whether or not distributions</p> <p>20 should be made to Highland?</p> <p>21 A. No.</p> <p>22 Q. Did you have any discussions with</p> <p>23 anybody at any time as to whether or not</p> <p>24 Highland's bankruptcy filing had any impact or</p> <p>25 effect on SE Multifamily's ability to make</p>	<p style="text-align: right;">Page 121</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 distributions to its member -- members?</p> <p>3 A. No.</p> <p>4 Q. So nobody ever told you that they</p> <p>5 believed that SE Multifamily couldn't make</p> <p>6 distributions to its members as a consequence of</p> <p>7 Highland's bankruptcy filing; is that fair?</p> <p>8 A. I had no such conversations.</p> <p>9 Q. And you never told anybody that</p> <p>10 SE Multifamily shouldn't make any distributions</p> <p>11 to its members as a result of Highland's</p> <p>12 bankruptcy filing; correct?</p> <p>13 A. I -- I did not. It sounds like a</p> <p>14 factual thing, and I -- I'm not aware that</p> <p>15 bankruptcy prevents it, but maybe it does. I</p> <p>16 don't know.</p> <p>17 Q. I'm not asking you for the legal</p> <p>18 conclusion. I'm just asking you about your</p> <p>19 recollection of communications you've had with</p> <p>20 others. Do you understand that?</p> <p>21 A. Yes. And I -- I did not.</p> <p>22 Q. Did you ever instruct anybody not to</p> <p>23 make distributions to Highland from</p> <p>24 SE Multifamily?</p> <p>25 A. No.</p>



<p style="text-align: right;">Page 122</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Are you aware that SE Multifamily</p> <p>3 distributed \$49,000 to Highland earlier this</p> <p>4 year?</p> <p>5 A. No.</p> <p>6 Q. So nobody ever discussed with you the</p> <p>7 distribution of \$49,000 from SE Multifamily to</p> <p>8 Highland; is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you have no understanding and</p> <p>11 knowledge as to why such a distribution might</p> <p>12 have been made; correct?</p> <p>13 A. No.</p> <p>14 Q. Did you delegate to anybody the</p> <p>15 responsibility for making distributions from</p> <p>16 SE Multifamily?</p> <p>17 A. No, not -- not specifically.</p> <p>18 Q. Generally?</p> <p>19 A. No, I mean, the long-term investment</p> <p>20 vehicle, distributions haven't been -- haven't</p> <p>21 crossed my mind or impart by my conversation. A</p> <p>22 \$49,000 distribution probably had a legal or --</p> <p>23 or taxable reason or a tax reason I'm not aware</p> <p>24 of. But it -- it's a small amount that, you</p> <p>25 know, I don't think I needed to be aware of it</p>	<p style="text-align: right;">Page 123</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 either.</p> <p>3 Q. Do you know whether HCRE has received</p> <p>4 the \$291 million capital contribution that was</p> <p>5 shown on Schedule A as having been made on its</p> <p>6 behalf?</p> <p>7 A. I don't want to joke here but --</p> <p>8 yeah, I'm not going to joke. I don't believe so.</p> <p>9 I have no awareness of -- of such a thing.</p> <p>10 Q. Okay. Do you know if -- if BH</p> <p>11 Equities -- withdrawn.</p> <p>12 Do you know if BH Equities has</p> <p>13 received all or any of its capital back?</p> <p>14 A. I -- I don't know. I don't -- I</p> <p>15 don't believe so.</p> <p>16 Q. Okay. I'm just going to show you one</p> <p>17 document, just going by what I think you said</p> <p>18 before at least, I can. I'm going to show you</p> <p>19 what's been premarked as Exhibit 12.</p> <p>20 (Exhibit 12 was marked.)</p> <p>21 Q. All right. Do you see this is a K-1</p> <p>22 for 2018 for SE Multifamily Holdings, LLC that</p> <p>23 was given to Highland Capital Management, L.P.?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. If we can go to the bottom of</p>
<p style="text-align: right;">Page 124</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 the document, you'll see -- you'll see -- no,</p> <p>3 just the -- I'm sorry, the bottom of the first</p> <p>4 page -- you'll see there's in the lower</p> <p>5 right-hand corner there's BVLLP. Do you see that</p> <p>6 little Bates number?</p> <p>7 A. Yeah.</p> <p>8 Q. So I'll represent to you,</p> <p>9 Mr. Dondero, that we obtained this document from</p> <p>10 Barker Viggato, the firm that prepares</p> <p>11 SE Multifamily's tax returns.</p> <p>12 Looking at this document, can you</p> <p>13 confirm for me that you've never seen a document</p> <p>14 of this type for SE Multifamily? Look at all of</p> <p>15 it if you want, whatever you want to see.</p> <p>16 A. Yeah, I've -- I've never seen it.</p> <p>17 Q. Okay. And can you confirm that you</p> <p>18 still believe you've never seen a K-1 that was</p> <p>19 ever issued on behalf of SE Multifamily to any of</p> <p>20 its members?</p> <p>21 A. I've -- I've never seen one before.</p> <p>22 Q. Okay. And you didn't have any</p> <p>23 personal involvement in the preparation of any of</p> <p>24 SE Multifamily's tax returns; correct?</p> <p>25 A. I did not.</p>	<p style="text-align: right;">Page 125</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. And you're not aware of what</p> <p>3 information was given to Barker Viggato to enable</p> <p>4 them to prepare SE Multifamily's tax returns;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. You've never spoken with</p> <p>8 Barker Viggato about any aspect of</p> <p>9 SE Multifamily's tax returns; correct?</p> <p>10 A. No.</p> <p>11 Q. And nobody's ever told you that they</p> <p>12 believe there was an error in any of</p> <p>13 SE Multifamily's tax returns; correct?</p> <p>14 A. Correct, no one's said that to me.</p> <p>15 Q. And you have no knowledge of any</p> <p>16 amendment that might be cons- -- that might be</p> <p>17 being considered right now -- withdrawn.</p> <p>18 Do -- do you know whether any</p> <p>19 consideration was ever given to amending any of</p> <p>20 SE Multifamily's tax returns?</p> <p>21 A. I -- I have no awareness. I have no</p> <p>22 awareness there's an issue. I still don't know</p> <p>23 if there really is a mistake or not, but -- but</p> <p>24 no one's -- no one's -- but no one's talked to me</p> <p>25 about correcting what might or might not be a</p>

<p style="text-align: right;">Page 126</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 mistake.</p> <p>3 Q. Do you know if SE Multifamily's tax</p> <p>4 returns for 2001 have been completed?</p> <p>5 A. You don't mean 2001.</p> <p>6 Q. I don't, you're absolutely right. I</p> <p>7 appreciate that.</p> <p>8 Do you know whether SE Multifamily's</p> <p>9 tax returns for 2021 have been completed?</p> <p>10 A. I do not know.</p> <p>11 Q. Do you know whether Barker Viggato</p> <p>12 has prepared or is preparing SE Multifamily's tax</p> <p>13 returns for 2021?</p> <p>14 A. I have no idea.</p> <p>15 Q. Do you have any knowledge as to</p> <p>16 whether or not the tax preparer for</p> <p>17 SE Multifamily has been replaced?</p> <p>18 A. I have no idea.</p> <p>19 Q. Have you been involved in any</p> <p>20 discussions with anybody at any time as to</p> <p>21 whether or not Barker Viggato was going to resign</p> <p>22 from its position as tax preparer for</p> <p>23 SE Multifamily?</p> <p>24 A. I have no idea.</p> <p>25 Q. Do you know -- did you ever</p>	<p style="text-align: right;">Page 127</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 participate in any communications with anybody at</p> <p>3 any time as to whether Barker Viggato should be</p> <p>4 replaced as SE Multifamily's tax preparer?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 MR. MORRIS: Can we put up what's</p> <p>8 been premarked as Exhibit 20, please.</p> <p>9 (Exhibit 20 was marked.)</p> <p>10 Q. All right. This is the HCRE Proof of</p> <p>11 Claim. Do you see in the upper right, it's filed</p> <p>12 on April 8, 2020?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And if we can scroll down to</p> <p>15 page 3. A little further.</p> <p>16 That's your electronic signature, do</p> <p>17 I have that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Did you authorize your electronic</p> <p>20 signature to be affixed to this document?</p> <p>21 A. Yes.</p> <p>22 Q. Did you authorize your electronic</p> <p>23 signature to be affixed on behalf of HCRE?</p> <p>24 A. Yes.</p> <p>25 Q. Did you authorize Bonds Ellis to file</p>
<p style="text-align: right;">Page 128</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 this document on behalf of HCRE?</p> <p>3 A. I'm sorry, what?</p> <p>4 Q. Did you authorize Bonds Ellis to file</p> <p>5 this Proof of Claim on behalf of HCRE?</p> <p>6 A. Yes.</p> <p>7 Q. Did you -- did you ask Bonds Ellis to</p> <p>8 prepare this document?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did you review it before it</p> <p>11 was filed?</p> <p>12 A. I'm -- no, I -- I viewed it as a</p> <p>13 legal document. I let the lawyers put it</p> <p>14 together.</p> <p>15 Q. So you didn't review it before it was</p> <p>16 filed?</p> <p>17 A. No.</p> <p>18 Q. Do you see in the left it says, "A</p> <p>19 person who files a fraudulent claim could be</p> <p>20 fined up to \$500,000, imprisoned up to 5 years,</p> <p>21 or both"?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Did you understand that this</p> <p>24 document was being signed and filed subject to</p> <p>25 those potential penalties at the time you signed</p>	<p style="text-align: right;">Page 129</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 it?</p> <p>3 A. Yes. Or no. I mean, I -- I -- I</p> <p>4 know it has to be accurate. I didn't</p> <p>5 specifically read that section, though.</p> <p>6 Q. Did you provide -- let's go to</p> <p>7 Exhibit A. So -- so you didn't really read this</p> <p>8 exhibit before you authorized this document to be</p> <p>9 filed; is that right?</p> <p>10 A. Correct. I trusted the lawyers to</p> <p>11 prepare a proper POC.</p> <p>12 Q. And did the lawyers rely on you for</p> <p>13 the information that they used to formulate this</p> <p>14 document?</p> <p>15 A. Not me specifically, but our firm</p> <p>16 here for sure.</p> <p>17 Q. So do you know who provided -- and I</p> <p>18 just want the identify -- the identity of -- of</p> <p>19 the person or persons that you're aware of who</p> <p>20 provided the information to Bonds Ellis that</p> <p>21 enabled them to formulate this Proof of Claim?</p> <p>22 A. I -- I don't know who it would have</p> <p>23 been -- it would -- it wasn't me, because it</p> <p>24 would have been somebody in the Real Estate or</p> <p>25 Legal team -- on the Real Estate team.</p>

<p style="text-align: right;">Page 130</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Did you ask somebody to work with</p> <p>3 Bonds Ellis to formulate this Proof of Claim?</p> <p>4 A. Yes.</p> <p>5 Q. Who did you --</p> <p>6 A. I del -- I delegated it to</p> <p>7 Bonds Ellis to work with our Real Estate team.</p> <p>8 Q. So -- so you don't know who</p> <p>9 Bonds Ellis worked with; is that fair?</p> <p>10 A. That's fair.</p> <p>11 Q. Do you know what information was</p> <p>12 given to Bonds Ellis that enabled them to</p> <p>13 formulate this Proof of Claim?</p> <p>14 A. I do not.</p> <p>15 Q. Did you provide any comments to this</p> <p>16 Proof of Claim before you authorized your</p> <p>17 electronic signature to be affixed to it and</p> <p>18 filed on behalf of HCRE?</p> <p>19 A. I did not.</p> <p>20 Q. Did you do any diligence of any kind</p> <p>21 to make sure that Exhibit A was truthful and</p> <p>22 accurate before you authorized it to be filed?</p> <p>23 A. I relied on my attorneys. I -- I</p> <p>24 didn't do separate diligence.</p> <p>25 Q. Did you personally look at any</p>	<p style="text-align: right;">Page 131</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 documents before authorizing this document to be</p> <p>3 filed?</p> <p>4 A. I did not.</p> <p>5 Q. So is it fair to say that you didn't</p> <p>6 look at the Amended and Restated LLC Agreement</p> <p>7 before authorizing this document to be filed?</p> <p>8 A. I personally did not. I delegated it</p> <p>9 to Bonds Ellis to work with my real estate guys</p> <p>10 and I relied on Bonds Ellis.</p> <p>11 Q. Is it fair to say that the idea for</p> <p>12 filing this Proof of Claim originated with you?</p> <p>13 A. I don't -- I don't think so. At this</p> <p>14 time we're -- it was early in the case, this was</p> <p>15 -- I -- all the entities were coming up with POCs</p> <p>16 if they thought they had relevant POCs.</p> <p>17 Q. Whose idea was it to file this Proof</p> <p>18 of Claim on behalf of HCRE?</p> <p>19 A. I don't remember. I don't remember</p> <p>20 back then. It might have been come from the real</p> <p>21 estate group. It might have come -- it might</p> <p>22 have come from Bonds Ellis. I don't know.</p> <p>23 Q. So you don't know where the idea</p> <p>24 originated; correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 132</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. You didn't review any documents</p> <p>3 before authorizing this to be filed; correct?</p> <p>4 A. I did not.</p> <p>5 Q. You don't recall delegating to</p> <p>6 anybody the specific responsibility for providing</p> <p>7 information to -- to Bonds Ellis so that they</p> <p>8 could prepare a truthful and accurate Proof of</p> <p>9 Claim; correct?</p> <p>10 A. Not specific -- well, not -- Bonds</p> <p>11 Ellis was given full access and Bonds Ellis spoke</p> <p>12 with people in the real estate group.</p> <p>13 Q. What people in the --</p> <p>14 A. That's correct.</p> <p>15 Q. What people are you referring?</p> <p>16 A. Like I said, I -- I don't know. But</p> <p>17 there's no way Bonds Ellis could have created</p> <p>18 this on their own.</p> <p>19 Q. But you don't know who helped them</p> <p>20 create it; is that fair?</p> <p>21 A. Correct.</p> <p>22 Q. Did you speak with Mr. McGraner</p> <p>23 before authorizing Bonds Ellis to file this</p> <p>24 document on behalf of HCRE?</p> <p>25 A. Not -- no, not specifically.</p>	<p style="text-align: right;">Page 133</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Did you ever tell Mr. McGraner that</p> <p>3 you were going to file this Proof of Claim on</p> <p>4 behalf of HCRE before authorizing Bonds Ellis to</p> <p>5 do just that?</p> <p>6 A. I don't -- I don't remember telling</p> <p>7 him. I know he was aware of it, but I don't</p> <p>8 remember telling him.</p> <p>9 Q. Did you show it to him before you</p> <p>10 filed it?</p> <p>11 A. I -- yeah, I didn't prepare it. I</p> <p>12 didn't -- I assume him and his group saw it</p> <p>13 before it came to me from Bonds Ellis.</p> <p>14 Q. What's the basis for that assumption?</p> <p>15 A. Because Bonds Ellis could not have</p> <p>16 prepared this on their own.</p> <p>17 Q. And Bonds Ellis would have relied on</p> <p>18 people that you can't identify in the real estate</p> <p>19 group; correct?</p> <p>20 A. Correct. I don't -- I don't know for</p> <p>21 sure. It -- it was probably -- it was probably</p> <p>22 the lawyers in the real estate group, but I don't</p> <p>23 know for sure. I don't want to speculate.</p> <p>24 Q. Okay. I appreciate that. Did you do</p> <p>25 anything in your -- did you -- did you personally</p>

<p>Page 134</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 do anything to ascertain whether or not Exhibit A</p> <p>3 was truthful and accurate before you caused HCRC</p> <p>4 to file it?</p> <p>5 A. I did not do anything. I -- I feel</p> <p>6 it's a bona fide POC period but -- you know, but</p> <p>7 I didn't do anything to verify it.</p> <p>8 Q. How about Mr. Broaddus? Did you</p> <p>9 speak with him at all before authorizing HCRC to</p> <p>10 file this document?</p> <p>11 A. No, not that I recall.</p> <p>12 Q. Do you know if Mr. Broaddus saw a</p> <p>13 copy of this before it was filed?</p> <p>14 A. I have no idea.</p> <p>15 Q. Did anybody in -- did you ever ask</p> <p>16 anybody in the real estate group whether this</p> <p>17 document was truthful and accurate before you</p> <p>18 authorized HCRC to file it?</p> <p>19 A. I still believe it's truthful and</p> <p>20 accurate. But I -- I did not specifically ask</p> <p>21 anybody in the real estate group; my</p> <p>22 conversations were with Bonds Ellis.</p> <p>23 Q. And I apologize, I know that I asked</p> <p>24 you this, but I either don't remember the answer</p> <p>25 or I don't believe I got an answer.</p>	<p>Page 135</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Where did the idea for filing this</p> <p>3 Proof of Claim originate?</p> <p>4 A. I don't know. I mean, like I said,</p> <p>5 it was early in the case, all the entities were</p> <p>6 coming up with different claims that different</p> <p>7 entities might have. This is back when our legal</p> <p>8 team still worked and supported us as a paying</p> <p>9 client. And the lawyers were going through all</p> <p>10 the different entities and evaluating claims and</p> <p>11 working with the business professional on all the</p> <p>12 different entities.</p> <p>13 Bonds Ellis filed it, but Bonds Ellis</p> <p>14 wouldn't have been able to do it without keeping</p> <p>15 in close contact and communication with the real</p> <p>16 estate team, either the professionals or the</p> <p>17 lawyers on the real estate team.</p> <p>18 Q. Mr. Dondero, other than the folks at</p> <p>19 Bonds Ellis, did you discuss this Proof of Claim</p> <p>20 with anybody in the world that you can recall</p> <p>21 prior to the time it was filed?</p> <p>22 A. No, not beyond Bonds Ellis, no.</p> <p>23 Q. And so you didn't take any steps to</p> <p>24 see if members in the real estate group believed</p> <p>25 that this was truthful and accurate before you</p>
<p>Page 136</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 authorized Bonds Ellis to file; correct?</p> <p>3 A. I did not. But I believe Bonds Ellis</p> <p>4 did that; they -- they handled the communication</p> <p>5 with the real estate team.</p> <p>6 Q. Do you know who at Bonds Ellis was</p> <p>7 responsible for communicating with the real</p> <p>8 estate team?</p> <p>9 A. No.</p> <p>10 Q. Do you know whether anybody from</p> <p>11 Bonds Ellis ever communicated with the real</p> <p>12 estate team?</p> <p>13 A. Again, they had to; they could not</p> <p>14 have come up with this on their own.</p> <p>15 Q. I'm just asking you -- I don't want</p> <p>16 do you surmise or to assume or anything like</p> <p>17 that. I'm asking you for personal knowledge.</p> <p>18 Do you have any personal knowledge</p> <p>19 that Bonds Ellis communicated with anybody in the</p> <p>20 real estate group regarding this Proof of Claim?</p> <p>21 A. I don't have personal knowledge.</p> <p>22 Q. Let's just look at a couple of the</p> <p>23 sentences -- the statements that are in here.</p> <p>24 The second sentence says, "Claimant may be</p> <p>25 entitled to distributions out of SE Multifamily,</p>	<p>Page 137</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 but such distributions have not been made because</p> <p>3 of the actions or inactions of the Debtor."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. What's the factual basis for that</p> <p>7 statement?</p> <p>8 A. I don't know.</p> <p>9 Q. Can you identify any actions or</p> <p>10 inactions that Highland took or didn't take that</p> <p>11 prevented SE Multifamily from making</p> <p>12 distributions?</p> <p>13 A. Only the bankruptcy itself and the</p> <p>14 stay on contracts would fall into that category.</p> <p>15 Q. Anything else?</p> <p>16 A. That's -- that's all I got.</p> <p>17 Q. Then it says, "Claimant contends that</p> <p>18 all or a portion of the Debtor's equity,</p> <p>19 ownership, economic rights, equitable with</p> <p>20 beneficial interests in SE Multifamily does" --</p> <p>21 and I think the word not is omitted -- "belong to</p> <p>22 the Debtor or maybe the property of the</p> <p>23 Claimant."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 138</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. What's the factual basis for that</p> <p>3 statement or that contention anyway?</p> <p>4 A. I think what ultimately got woven</p> <p>5 into our responses was that Highland's</p> <p>6 contribution for its ownership may not have been</p> <p>7 adequate and on an ongoing basis may not be</p> <p>8 adequate relative to the contributions of -- of</p> <p>9 HCRE.</p> <p>10 Q. Anything else?</p> <p>11 A. That's -- that's -- that's it for</p> <p>12 that one, I think.</p> <p>13 Q. That's a subjective determination</p> <p>14 concerning adequacy, do I have that right?</p> <p>15 A. I wouldn't say subjective versus</p> <p>16 adequacy. There's the initial adequacy, which</p> <p>17 you could say is maybe subjective of, well,</p> <p>18 what's a guaranty worth and what's 49,000 worth.</p> <p>19 You know, when the -- if the guaranty</p> <p>20 rolls off fairly quickly, you know, was that --</p> <p>21 was -- was the guaranty worth that equity</p> <p>22 interest. You could call it subjective, but it's</p> <p>23 definitely debatable or arguable.</p> <p>24 But on an ongoing basis, if HCRE</p> <p>25 isn't -- isn't taking out management fees or</p>	<p style="text-align: right;">Page 139</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 asset acquisition fees or disposition fees or</p> <p>3 other expenses, you could make the argument that</p> <p>4 the equity ownership should be different, but</p> <p>5 ultimately, I guess, it's shared, you could get</p> <p>6 to the same place by just, you know, putting</p> <p>7 expenses into it.</p> <p>8 But at this point in time, it was a</p> <p>9 bona fide reason for arguing Proof of Claim</p> <p>10 because I don't -- I don't think in the</p> <p>11 bankruptcy the State allowed contracts or</p> <p>12 expenses to be added. But --</p> <p>13 Q. You mentioned earlier that you</p> <p>14 thought there was a mistake in the agreement</p> <p>15 because it didn't contain a provision that</p> <p>16 allowed for amendments. Do I have that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Having --</p> <p>19 A. Yeah, it -- yeah. I'm sorry. Go</p> <p>20 ahead.</p> <p>21 Q. Having looked at some of the</p> <p>22 provisions of the agreement that you signed on</p> <p>23 behalf of HCRE and -- and Highland, putting you</p> <p>24 back in the time that you signed it in March of</p> <p>25 2019, is there any other provision of the</p>
<p style="text-align: right;">Page 140</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 agreement that was included or omitted that you</p> <p>3 think was a mistake?</p> <p>4 A. Having somewhat on counsel --</p> <p>5 counsels for this, but I believe the only</p> <p>6 highlighted one is there should be a provision in</p> <p>7 there that allows the -- that manager -- the</p> <p>8 amendments. But beyond that, I don't have an</p> <p>9 awareness of what else mistake that should be</p> <p>10 corrected.</p> <p>11 Q. Are you aware of -- do you see it</p> <p>12 says in the next sentence accordingly, "Claimant</p> <p>13 may have a claim against the Debtor."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. As you sit here today, as the</p> <p>17 majority owner of HCRE, does HCRE contend that it</p> <p>18 is entitled to all or any portion of Highland's</p> <p>19 membership interests in SE Multifamily as set</p> <p>20 forth in the Amended and Restated LLC Agreement?</p> <p>21 A. Well, I think we're dropping the POC,</p> <p>22 right. And so we're dropping POC. So the -- the</p> <p>23 answer is we don't think we have a claim at the</p> <p>24 moment.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 141</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 MR. MORRIS: Let's take a</p> <p>3 ten-minute break and I just want to check</p> <p>4 my notes. But I'm either done or I just</p> <p>5 have some cleanup. So right now it is 1 --</p> <p>6 1:30 your time. Let's come back at 1:40,</p> <p>7 if we can.</p> <p>8 THE WITNESS: Okay.</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 1:29 p.m., and we are going off the record.</p> <p>11 (Break from 1:27 p.m. to 1:37 p.m.)</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 1:39 p.m. and we are back on the record.</p> <p>14 Q. (BY MR. MORRIS) All right.</p> <p>15 Mr. Dondero, just a few more questions.</p> <p>16 Are you aware that back in June,</p> <p>17 Highland made a request to SE Multifamily for</p> <p>18 access to books and records?</p> <p>19 A. No.</p> <p>20 Q. This is the first time you're hearing</p> <p>21 of this?</p> <p>22 A. They didn't come to me, I -- yeah.</p> <p>23 Q. Are you aware that members, under the</p> <p>24 LLC agreement, have a right to access and copy</p> <p>25 SE Multifamily's records?</p>

<p style="text-align: right;">Page 142</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 A. You mean in the agreement members</p> <p>3 have a right, is that what you're asking?</p> <p>4 Q. Yes.</p> <p>5 A. Yes.</p> <p>6 Q. Can you think of any reason why</p> <p>7 Highland wouldn't be given that right, right now?</p> <p>8 A. No.</p> <p>9 Q. So as the manager of SE Multifamily,</p> <p>10 do you authorize SE Multifamily to provide access</p> <p>11 to Highland to inspect and copy SE Multifamily's</p> <p>12 books and records?</p> <p>13 A. Well, let me say I'm not aware of the</p> <p>14 issue. I'll research the issue and see if</p> <p>15 there's a bona fide reason why they aren't. But</p> <p>16 if there isn't a bona fide reason and you're</p> <p>17 entitled to it by the document, I'll make sure</p> <p>18 Highland gets it.</p> <p>19 Q. Okay. I appreciate that. And last</p> <p>20 couple of questions.</p> <p>21 Did there come a time when you made a</p> <p>22 decision on behalf of HCRE not to pursue the</p> <p>23 Proof of Claim against Highland?</p> <p>24 A. At the -- at the -- on the advice of</p> <p>25 counsel, I state that they made the decision.</p>	<p style="text-align: right;">Page 143</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Q. Okay. Well, you made the decision on</p> <p>3 the advice of counsel; correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And do you recall when you</p> <p>6 made that decision?</p> <p>7 A. No. No.</p> <p>8 Q. It was recently; is that fair?</p> <p>9 Sometime in late August, mid-August.</p> <p>10 A. Yeah, I believe it was relatively</p> <p>11 recently. I don't remember when.</p> <p>12 Q. I don't know -- I -- I really don't</p> <p>13 want to know about what advice you may have</p> <p>14 received on the topic. But I do want to know if</p> <p>15 there are any facts that you relied upon in</p> <p>16 making your decision not to pursue the Proof of</p> <p>17 Claim on behalf of HCRE?</p> <p>18 A. Well, it was advice of counsel. I --</p> <p>19 I don't want to talk about the variables --</p> <p>20 Q. No, I appreciate that.</p> <p>21 A. -- there may have been.</p> <p>22 Q. I don't want to know about the</p> <p>23 advice. But I'm asking you if you -- if you</p> <p>24 learned of a fact that caused you to change your</p> <p>25 view as to the validity of the Proof of Claim.</p>
<p style="text-align: right;">Page 144</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 Was there a fact or was it just legal advice?</p> <p>3 A. There isn't a fact that I recall</p> <p>4 other than legal advice.</p> <p>5 Q. Okay. I appreciate that.</p> <p>6 MR. MORRIS: I have nothing</p> <p>7 further, Mr. Dondero. Sorry for the rocky</p> <p>8 start. Always appreciate your -- you know,</p> <p>9 your -- your attention and your -- your</p> <p>10 efforts, I really do.</p> <p>11 I don't know if anybody else has</p> <p>12 any questions here.</p> <p>13 MR. GAMEROS: No, we don't have any</p> <p>14 questions. We'll reserve our questions for</p> <p>15 the time of trial. We'll also re --</p> <p>16 reserve read and sign. And if we're off</p> <p>17 the record, I need to give my contact</p> <p>18 information to TSG.</p> <p>19 THE VIDEOGRAPHER: Okay. Do you</p> <p>20 want to close the record at this point, the</p> <p>21 video?</p> <p>22 MR. MORRIS: Thank you, Bill.</p> <p>23 Thank you, Mr. Dondero.</p> <p>24 THE VIDEOGRAPHER: Okay. The time</p> <p>25 is -- hold on -- the time is 1:43 p.m., and</p>	<p style="text-align: right;">Page 145</p> <p>1 JAMES DONDERO - 10/4/22</p> <p>2 this ends the deposition of Mr. James</p> <p>3 Dondero.</p> <p>4 (Time noted - 1:41 p.m.)</p> <p>5</p> <p>6</p> <p>7 _____</p> <p>8 JAMES DONDERO</p> <p>9</p> <p>10 Subscribed and sworn to before me this _____</p> <p>11 day of _____, 20____.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1		1	
2	C E R T I F I C A T E	2	ERRATA SHEET FOR THE TRANSCRIPT OF:
3	I, Kim A. McCann, RMR, CRR, CSR in and	3	Case Name: HIGHLAND CAPITAL MANAGEMENT, L.P.,
4	for the State of Texas, do hereby certify:	4	Dep. Date: October 4, 2022
5	That JAMES DONDERO, the witness whose	5	Deponent: JAMES DONDERO
6	deposition is hereinbefore set forth, was duly	6	Pg. Ln. Now Reads Should Read Reason
7	sworn by me and that such deposition is a true	7	_____
8	record of the testimony given by such witness;	8	_____
9	That pursuant to FRCP Rule 30,	9	_____
10	signature of the witness was requested by the	10	_____
11	witness or other party before the conclusion of	11	_____
12	the deposition;	12	_____
13	I further certify that I am not	13	_____
14	related to any of the parties to this action by	14	_____
15	blood or marriage; and that I am in no way	15	_____
16	interested in the outcome of this matter.	16	_____
17	IN WITNESS WHEREOF, I have hereunto	17	_____
18	set my hand this October 4, 2022.	18	
19		19	_____
20	_____	20	Signature of Deponent
21	Kim A. McCann, RMR, CRR, CSR	21	SUBSCRIBED AND SWORN BEFORE ME
22		22	THIS _____ DAY OF _____, 20____.
23		23	
24		24	_____
25		25	(Notary Public) MY COMMISSION EXPIRES: _____

Index: \$20..admissible

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